PRINCIPLES OF POLITICAL SCIENCE

BY

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PREFACE TO THE FIRST EDITION

THIS book is written primarily for students of Indian Universities. The course covered is substantially that prescribed by Calcutta University. To bring the subjects abreast of recent developments, in several instances additional material has been incorporated. Most of the qualities peculiar to the arrangement and scope of the book are to be ascribed to the primary end for which the book was undertaken. I venture to hope that the volume may be useful also to students outside India, and to any who wish to acquire a general knowledge of political theory and practice.

In the text of the book classical quotations and untranslated quotations from modern books the language of which is other than English have been studiously avoided. English is the medium of university instruction in India, and the Indian student, as a rule, is unacquainted with any other modern European Language. Latin and Greek are likewise unknown to the Indian student, whose classics are Sanskrit and Arabic or Persian. Throughout the book a knowledge of Logic and History has been assumed. Students of Political Economy and Political Science in India normally are expected to have passed the Intermediate examinations in these subjects.

As this book is meant to be a textbook for the earlier stages of political and economic studies, I have not elaborated what may be called abnormal theories. A fair impersonal presentation of modern political theory has been my endeavour. Originally I meant to include several chapters on the history of political theory, but the book ran the danger of being overcrowded; so, wherever possible, I have incorporated historical sections in the individual subjects. The treatment of some subjects, e.g., the Government of Britain, and the Government of India, has been much more detailed than a

first course of political studies usually demands. Such detailed treatment is due to the nature of the course prescribed in India. Repetition of detail, e.g., under the Executive (Chapter XIV) and under the individual governments (Chapters XXI-XXVII) is also due to local exigencies. The chapter on the Government of Japan, though not essential according to our local syllabus, is added to enable Indian students to know in outline the system of government in an eastern empire which for many years has created the deepest interest in India.

The bibliography appended is intended as an initial guide to Indian colleges wishing to start Political and Economic studies. The list has been compiled with reference to the sums usually available for such purposes.

In the moulding of ideas which have led to the writing of this book, my obligations have been many. These are best summarised when I say that I owe much to most of the authors whose books I recommend in my Library List, and whose theories or facts are specifically mentioned in the text. For more immediate help I am indebted to my late colleagues in Presidency College, Calcutta, the present Professors of Political Economy and Political Philosophy—Mr. J. C. Coyajee and Babu Panchanan Das Mukherji. To the latter in particular I am grateful for many suggestions and criticisms. To Mr. J. C. Kydd, Professor of Political Economy and Political Philosophy in the Scottish Churches College, Calcutta, I am also much obliged for valuable help. Throughout the whole book, from its earlier to its later stages, for criticism, for help in reading proofs and for the compilation of the index, I owe more than I can express to my wife.

R. N. GILCHRIST.

KRISHNAGAR, BENGAL,
February, 1921.

PREFACE TO THE SIXTH EDITION

THE four previous editions were mainly reprints of the first edition, with such additions and adaptations as it was necessary and possible to make from time to time. In the present edition, several of the chapters have been partly rewritten, and some new material has been added to bring the text into line with modern developments.

It may be noted that, in the chapters dealing with the Government of India, though the Federal constitution has been described in the present tense, the present structure of the Government of India has also been given in some detail. This is due to the fact that, while the new constitution has been introduced in the provinces, it has only been partially introduced at the centre. At the moment, the date of the introduction of the Federation of India, Part II of the Government of India Act, 1935, is uncertain.

It is regretted that, for reasons of space, it has been found necessary to omit the Library List which was a feature of the earlier volumes.

R. N. GILCHRIST.

CALCUTTA,
February, 1938.

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CHAPTER I

INTRODUCTORY

1. THE NAME AND SCOPE OF THE SCIENCE

The Name of the Science.—Political Science deals with the state and government. Within its scope are included so many subjects that writers have found considerable difficulty in finding a name sufficiently wide to cover its content. Political Science has now been widely accepted as the general designation for the science of the state and government, but several other names have been suggested. This is not without reason, for in a science which is older than Aristotle, the developments have naturally been very wide and far-reaching; indeed, several of the subjects with which we deal in this book have really developed into independent sciences. Political Science is one of the many sciences of society, and, as we shall see presently, it is impossible to draw absolute lines of demarcation between one branch of social science and another. The term is now a generally accepted one, indicating certain definite lines of study, all of which revolve round one centre —the state.

Politics.—Some writers, especially the earlier writers on the subject, use simply the word Politics as a title for the science. This word is derived from the Greek word *polis,* meaning a city, with its derivatives *polites,* a citizen, and the adjective *politikos,* civic. Other writers, using the word Politics as a general designation, subdivide the science into two broad divisions, viz., Political Philosophy, Theoretic or Deductive Politics, and Historical, Applied or Inductive Politics. Sir Frederick Pollock, for example, the well-known English writer on the subject, divides the science thus:—

Theoretical Politics	*Applied Politics*
A. Theory of the State.	A. The State (actual forms of government).
B. Theory of Government.	B. Government (the working of governments, administration, etc.).
C. Theory of Legislation.	C. Laws and Legislation (procedure, courts, etc.).
D. Theory of the State as an artificial person.	D. The State personified (diplomacy, peace, war, international dealings).

The first of these divisions, Theoretical Politics, is concerned with the fundamental characteristics of the state, without particular reference to the activities of government or the means by which the ends of the state are attained. The second division, Practical Politics, deals with the actual working of governments and the various institutions of political life. This division is both useful and exhaustive. It covers the whole field of Political Science, and, were the name Political Science substituted for Politics, the division would be universally acceptable. To the use of the word Politics, however, there is a well-grounded objection. Used in its original Greek sense, the word is unobjectionable, but modern usage has given it a new content which makes it useless as a designation for our science. The term Politics nowadays refers to the current problems of government, which as often as not are more economic in character than political in the scientific sense. When we speak of a man as interested in politics, we mean that he is interested in the current problems of the day, in tariff questions, in labour questions, in the relations of the executive to the legislature, in any question, in fact, which requires, or is supposed to require, the attention of the law-makers of the country. Similarly a "politician" is not a student of Political Science but a member of this or that political party. The words politics and politician, therefore, are so wide in application and indiscriminate in use that once and for all they had better be rejected as names for our science and students of our science. The etymological meaning is not the current meaning, and it is better in this case to bow to current usage than to etymology, just as the sister science, Economics, has done. The word Economics etymologically means household management, now known as Domestic Economy : the study of wealth is now definitely known as Political Economy or Economics.

Political Philosophy.—Another name which is sometimes used is Political Philosophy. This term is a most useful one if used for a specific purpose, but it is too narrow to include the whole field covered by our subject. Political Philosophy deals with the fundamental problems of the nature of the state, citizenship, questions of duty and right, and political ideals. This forms part of our subject. In the opinion of some English political thinkers, this is the main part of Political Science. Sidgwick, for example, declares

that the study of Political Science, or, as he calls it Politics, "is concerned primarily with constructing, on the basis of certain psychological premises, the system of relations which ought to be established among the persons governing, and between them and the governed, in a society composed of civilised men, as we know them." Another considerable part of our subject is historical and descriptive—the Applied Politics of Sir Frederick Pollock's division. This latter section, though closely concerned with Political Philosophy, would be out of place in a pure Political Philosophy course. Political Philosophy is in a sense prior to Political Science, for the fundamental assumptions of the former are a basis to the latter. Political Philosophy, in its turn, has to use much of the material supplied by Political Science. No definite line can be drawn between them, but according to modern usage Political Science has a certain definiteness of meaning which Political Philosophy has not yet attained.

The Political Sciences.—French writers sometimes use the plural form, the Political Sciences, which is correct insomuch as the various phenomena of the state and government really may be studied separately. Thus Sociology, Political Economy, Constitutional Law and Public Administration, all deal with phenomena closely connected with the state. These are special sciences, dealing with distinct branches of enquiry. Political Science too, as we understand it, deals with a particular subject in a general way. All these sciences, Political Science included, are social sciences; they deal with the relations of men in society, and as each man is essentially connected with the state, each social science is to some extent a political science. It is possible, however, to separate the various branches of enquiry. Political Economy deals with wealth; Sociology with the forms of social union, social laws and ideals; Political Science with the state and government. No absolute separation is possible. In Political Science we touch on problems which really belong to the domain of Sociology, Political Economy, Jurisprudence, and Constitutional Law. Political Science deals with the general problems of the state and government; these others deal with special problems.

Political Science: its Scope.—Both reason and usage, therefore, justify the name Political Science. Its central subject is the state, and the scope of the science is determined

by the enquiries that arise in connection with the state. These enquiries may broadly be classed under the state as it is; the state as it has been; the state as it ought to be. To discuss the state as it is, implies an analysis of the meaning of the state, its origin and its essential attributes. The various working manifestations of the state, that is, the principles and practice of existing governments naturally fall under this head. Under the state as it has been is included a historical survey of the working of governments, or the historical development of the state and of ideas concerning the state. The state as it ought to be includes the analysis of the functions of government, and a determination of the principles on which governments may best be conducted.

2. THE METHODS OF THE SCIENCE

Is Political Science a Science?—Aristotle, the greatest writer on the subject the world has had, called Political Science the master or supreme science. Several modern critics, however, refuse to Political Science the right of even the name science. They say that the subject-matter of the science is so varied, and in many cases so inexact, that proper scientific methods cannot be applied to it. The arguments of such critics apply equally to all the social sciences. Social, political and economic problems deal with the complex actions and motives of men, for which it is often admittedly difficult to find general laws. The exactness of Physics and Chemistry is absent from the social sciences. It is impossible to deal with problems of man in the clear-cut way by which we can deal with problems of matter. It is easy to analyse a chemical compound and to say exactly what it is. Experiments, too, in these natural sciences enable laws to be tested with accuracy and in various ways. While we may agree that the exactness of the natural sciences is impossible of attainment in the social sciences, nevertheless social problems can be treated with the same scientific methods as Chemistry or Physics. The results, indeed, may not be so accurate or so easily tested, but, as we shall see, the various subjects with which we deal present a systematised mass of material which is capable of being treated by ordinary scientific methods. We shall see that general laws can be deduced from given material, and that these laws are useful in actual problems of government.

To say that the only real sciences are those which have exact results, with the dogmatic proof of experiment, is to deny the possibility of Ethics, Political Economy, Political Science, Sociology and Metaphysics being sciences. The chief disproof of the contention is that they are recognised as sciences by thinking men. They are rapidly expanding, and as time goes on their suitability for the application of scientific methods is amply demonstrated.

Difficulties in Political Science.—It is true that in Political Science there are many difficulties which do not occur in, say, Chemistry or Physics. In the natural sciences it is possible by observation and experiment to obtain uniform and exact laws. One chemical element is exactly the same all the world over; any variations in its composition can be tested and explained. In Political Science it is difficult to find uniform and unvarying laws. The material is constantly varying. Actions and reactions take place in various and often unforeseen ways. A man is a member not only of a state, but of a host of other social groups—a municipality, a church, a trade-union, a stock-exchange, a university, a caste or a family. To understand his actions in one phase of his life often requires a knowledge of the social groups influencing him, or influenced by him. Social and political relations are constantly changing, and what may be true of them today may not be true a century hence. In all matters concerning man, too, there are unconscious assumptions in the mind, which, formed before the mind consciously reacts to them, often give a bias to our judgments. It not infrequently happens in social sciences, like Political Economy and Political Science, that at the outset of our study we cannot lay down the final limits of the subject-matter. The methods of enquiry are frequently best explained by using them, and observing their results when applied to concrete problems. Complete and final answers to questions in social science can be given only when the science is ended. Historically, we find that a body of systematic knowledge is built up before reflexion analyses its presuppositions. What is historically a late development of the science is logically the first and fundamental question, so that the methods are often best understood by an analysis of the actual scope of the science.

Experimental Methods.—Though the experimental method as applied in Physics and Chemistry is inapplicable, never-

theless there is a wide field of experimentation of a definite kind in Political Science. The political scientist cannot select one community here and another there and experiment with democracy in the one and socialism in the other. Even if he could, his results would be influenced by various kinds of unpredictable causes such as wars, revolutions, strikes and religious movements. The source of the experiments of Political Science is history ; they rest on observation and experience. Every change in the form of government, every new law passed, every war is an experiment in Political Science. These are materials for Political Science just as, say, carbon is material for Chemistry. Most of these events do not take place as conscious experiments : they simply happen. In the modern world, however, political experiments *are* made, definitely based on reasoning provided by Political Science. Three notable examples may be quoted—one, the grant by the English Parliament of responsible government to Canada in accordance with the recommendations contained in Lord Durham's Report of 1839 ; another, the grant by Parliament of constitutional reforms to India, in the Government of India Act, 1919, on the basis of the recommendations of the Montagu-Chelmsford Report : and the third, the introduction of Provincial Autonomy and the creation of the Federation by the Government of India Act, 1935, on the basis of the Report of the Statutory Commission or, as it is usually known, the Simon Report, as modified by subsequent committees.

The Historical Method.—The chief method of experimentation in Political Science is thus the historical method. Properly to understand political institutions, we must study them in their origin, their growth and development. History not only explains institutions, but it helps us to make certain deductions for future guidance. It is the pivot round which both the inductive and the deductive processes of Political Science work.

Sidgwick's View of the Historical Method.—The historical method, of which the best modern English exponents are Seeley and Freeman, is mainly inductive. By it generalisations are made from the observation and study of historical facts. More than any other method, it gives positive results. Philosophical political scientists do not give it the same importance as the historical school. Sidgwick, for example, gives this method a secondary position, for two reasons. First,

he holds that history cannot determine the ultimate standard of good and bad, or of right and wrong in political life. The goodness or badness of the political institutions which history shows us is determined on other grounds than historical, i.e., ethical or philosophical. Second, the study of history only in a very limited way can enable us to choose means for the attainment of the end of political life, for not only is it difficult to ascertain the complete bearing of past events with accuracy, but also each age has its own problems and difficulties, all of which are relative to the times in which they occur.

Sidgwick's objections are quite justifiable in the case of the indiscriminate use of historical material. But the political scientist must exercise careful judgment in his analysis and selection of material. History itself, moreover, is becoming more and more exact as time goes on, so that the objection regarding accuracy loses its meaning. History, too, enables us to judge the goodness or badness of actions, though it does not provide us with our actual ethical standards. As in all scientific methods, the greatest care must be used in the application of the historical method. Otherwise it may degenerate into what Bluntschli, the well-known German writer, calls "mere empiricism," which means too great adherence to historical facts, without due regard to causes and effects, and rigid conservatism, on the ground that what has been in the past must be now and for the future.

Comparative Method.—The historical method is supplemented by the comparative method, a method which is as old as Aristotle. This method tells us that, in order to find out the laws which underlie them, we must compare the various events of the world's history. Similar events may occur under very different political conditions, or *vice versâ*, similar political conditions may lead to very different political events. Revolutions, for example, have happened at all times and under various conditions. By the comparative method we sift out what is common, and try to find common causes and consequences. A modern example is the Russian revolution. Political scientists compare it with the English Great Rebellion and the French Revolution; they try not only to explain what has happened, but also to enunciate general principles which may give guidance for the future.

The comparative method must be used with great care. In trying to find general principles underlying historical

events, many elements of difference have to be examined. The social system, the economic conditions, the temperament of the people concerned, the capacity for political life, their moral standard, their qualities of obedience or law-abidingness, all must be taken into account. A comparison of the United States and India, for example, as regards democracy would be useless, were not the fundamental difference of caste thoroughly analysed, with its bearings on political phenomena.

In the comparative method the ordinary processes of inductive logic must be followed. These are (*a*) the method of single agreement, by which, among a number of instances of political phenomena, we find one element in common. This element, extracted by a process of elimination, whereby irrelevant antecedents are dispensed with, is the cause. The chief difficulty of this method is the possible existence of a plurality of causes. To cope with this we must vary the circumstances as much as possible by multiplying the instances. (*b*) The method of single difference, in which, given a certain political phenomenon, if an instance in which this phenomenon occurs and an instance in which it does not occur have every circumstance in common save one, that one circumstance, in which the two differ, occurring in the first phenomenon, is the cause. (*c*) The double method of agreement, or, as John Stuart Mill calls it, the joint method of agreement and difference. If various examples in which a political phenomenon occurs have only one element in common, while various similar instances in which it does not occur are marked by the absence of this element, then the element present in one and absent in the other is the cause or an integral part of the phenomenon. (d) The method of residues, according to which, after we have subtracted from the given political phenomena such parts as are already known to be cause and effect, the remnant may be judged to be the effect of the remaining causes. (*e*) The method of concomitant variations, whereby if a phenomenon varies in any manner whenever another phenomenon varies in another manner, then they somehow are connected by cause and effect.

Analogy. —These methods, applicable in a natural science like Chemistry, are equally applicable in Political Science, though the results are not so accurate. Particular care in Political Science is required in the case of one inductive

method, viz., analogy, where two things, because they resemble each other in certain points, may be regarded as resembling each other in all other points, though no definite cause can be found for such resemblance. Analogy is very useful in Political Science, but it must never be forgotten that analogy is not proof. It gives probability, not certainty, and the difficulty of its application in Political Science is all the more marked because of the vast number of circumstances surrounding any given instance.

The Philosophical Method.—These inductive methods are useful so far, but they must be used in conjunction with what Bluntschli calls the philosophical method. The truly philosophical, deductive or *a priori* method of which Rousseau, Mill and Sidgwick are exponents, starts from some abstract original idea about human nature and draws deductions from that idea as to the nature of the state, its aims, its functions and its future. It then attempts to harmonise its theories with the actual facts of history. The danger of this method is that the user, as Plato in his *Republic* or More in his *Utopia,* often allows his imagination to run riot and he forms theories which have little or no foundation in historical facts. The result is that the method degenerates into what Bluntschli calls mere ideology, which pays little or no attention to facts. This is particularly dangerous in practice, as may be seen from the French Revolution, the leaders of which were the unreasoning followers of those who, like Rousseau, preached the doctrine of liberty, equality and fraternity. A modern example is the Russian revolution, where extreme theories led to a collapse of the government system and to anarchy and mob-rule unparalleled in history.

The Right Method.—The two methods, historical and philosophical, do not conflict : they rather supplement and correct one another. The genuine historian as such is compelled to recognise the value of philosophy, and the true philosopher must equally take the counsel of history. The experiences and phenomena of history must be illumined with the light of ideas. The best method thus arises out of the blending of the philosophical and the historical methods. Aristotle and Burke are notable exponents of this method.

Methods and Points of View.—These are the methods of Political Science. Difficulty sometimes arises in the methodology of Political Science from confusing with methods

the points of view from which the science may be studied. Certain writers, chiefly French and German, give as methods the sociological, biological, psychological and juridical. These are not methods, but points of view. To study the state from the sociological point of view means to apply the theory of evolution to political phenomena ; the biological method tries to interpret the state and its organisation by comparing it with the living body, with brain, nerves, muscles, etc. ; the psychological tries to explain political phenomena through psychological laws ; and the juridical regards political society as a collection of [illegible]s, rights, and duties, without reference to the many other social forces influencing man in his relations with others.

Conclusion.—Not only, therefore, is Political Science a science with material as definite as that of Chemistry, Physics or Geology but it is a science where the recognised methods of these sciences can be regularly applied. Because slight shades of difference may vitiate a whole conclusion, as a science it is more difficult than the natural sciences. The difficulty in the application of these methods arises from the innumerable elements, undefined and undefinable, which occur in any science of man. Much patience in comparing details, much care in applying inductive methods, much mental balance in making judgments, all these are necessary in Political Science. It is a science which taxes the scientific mind to the utmost ; and its conclusions, no less than the discoveries of Chemistry, vitally affect the daily lives of the inhabitants of the globe.

3. THE RELATIONS OF POLITICAL SCIENCE TO ALLIED SCIENCES

Man is a social being, and his various social activities may be studied separately. His political life is only one part of his total social life, but as every human being lives within a state, the science of the state is necessarily connected with the other social sciences.

Sociology.—The various sciences dealing with man as a social entity are called the social sciences, and the most fundamental of them all is Sociology. Sociology is the general social science. It deals with the fundamental facts of social life, and, as political life is only a part of the sum-total of social life, Sociology is wider than Political Science. Sociology

is the study of the elementary principles of social union. It is not the sum of the various social sciences but the fundamental science of which, to use the term of a well-known American writer, Professor Giddings, they are "differentiations". In Political Science we must assume the facts and laws of human association, which facts and laws it is the duty of Sociology to study and determine. The exact boundaries of the two sciences cannot be rigidly defined. They occasionally overlap; but there is a clear general distinction. Sociology is the science of society: Political Science is the science of the state, or political society. Sociology studies man as a social being, and, as political organisation is a special kind of social organisation, Political Science is a more specialised science than Sociology.

History.—Political Science, as we have already seen, is intimately connected with History. Sir John Seeley, a well-known English writer on History and Political Science, has expressed the relationship in a classic couplet :—

> History without Political Science has no fruit,
> Political Science without History has no root.

History is a record of events; it tells the how and why of happenings. It is an account not only of events but of conditions and causes. History provides the raw material of Political Science. Not every type of history, however, is used by Political Science. The history of language, of customs, of battles, of art, of literature, for example, have no direct bearing on Political Science. Political Science is concerned mainly with political history and the history of the particular institutions which form the subject-matter of the science. These institutions can be properly understood only in their historical setting. History explains them by tracing their growth and explaining their changes in structure. Political Science, using this material, takes a wider view. It tries to find general causes and laws. Political Science, as we shall see, has a definitely historical section. In a treatise on Political Science we must trace the history of various institutions, not for the sake of history but to enable us to form the conclusions of our science. Insomuch as history not merely records events but analyses causes and points out tendencies it overlaps Political Science. Political Science, however, goes further. It uses

historical facts to discover general laws and principles; it selects, analyses and systematises the facts of history in order to extract the permanent principles of political life. Political Science, further, is teleological, that is to say, it deals with the state as it ought to be, whereas history deals with what has been.

Political Economy.—The general line of demarcation between Political Science and Political Economy or Economics is clear. Political Science is the science of the state: Economics is the science of wealth. Economics deals with the production, consumption, distribution and exchange of wealth, subjects which form a body of material quite distinct from that of Political Science. Obviously, however, government is closely concerned with economic matters. A glance at the prevailing questions before modern legislatures will show that a very large number, such as disputes between labour and capital, and the imposition of tariffs, are concerned with industrial and commercial matters. All economic activities are carried on within the state on conditions laid down by the state in laws, and the prevailing theories of state or of government functions profoundly affect the economic life of a country. It is a matter of first-rate importance to the producer of wealth, for example, to be able to judge whether the prevailing tendencies are individualistic or socialistic. Questions of individualism and socialism, indeed, illustrate better than any other the interaction of Political Science and Economics. As a rule they are treated fully in text-books on both Economics and Political Science, the political and economic arguments alike being set forth whether the book is meant as a text-book in Economics or Political Science. The two sciences, while each has its distinct subject-matter, are thus closely related. Political movements are profoundly influenced by economic causes: economic life is conditioned by political institutions and ideas. So close is the connection that scientific writers of a century ago regarded Economics as a branch of Political Science. Nowadays we separate the sciences, regarding both as differentiations of the more general science of Sociology.

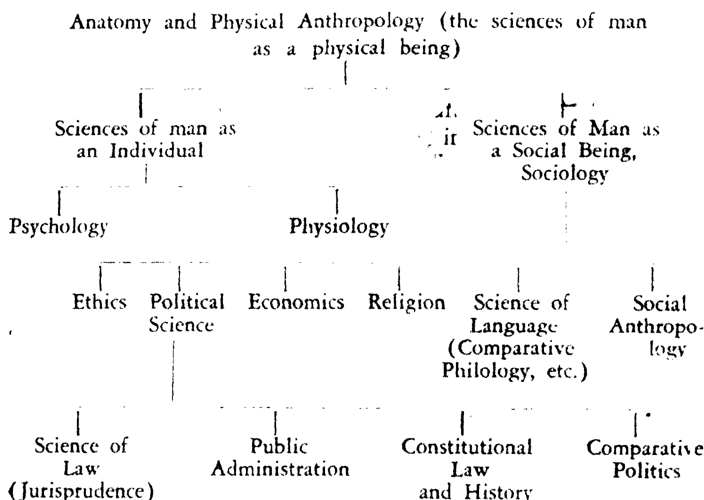
Ethics.—Political Science, the science of political order, is also closely connected with Ethics, the science of moral order. On general grounds the line of division is clear. Ethics is the science of conduct or morality. Ethics deals with the

rightness and wrongness of man's conduct, and of the ideals towards which man is working. Each man must live in a state. therefore both rightness and wrongness of conduct, and the moral ideal, must be concerned with the state. The political ideal cannot be divorced from the ethical ideal. We cannot conceive a perfect state where wrong ethical ideals prevail. The ethical and the political must in this case coincide. The science of Ethics is therefore prior to Political Science. We must settle the basis of right and wrong before we discuss political institutions and ideals. Ethics is a study of human motives, an analysis of intention, of desires and of the moral end, and this moral end is the ultimate justification of Political Science. Both sciences are teleological, and in their ideals they must be in agreement; but the main body of material is distinct.

The close inter-relation of these various sciences with Political Science is shown by the place universities have given it in curricula. Sometimes it is established as a subject by itself, independent of other subjects; sometimes is given as a half-subject with Political Economy; sometimes it is included in the History course, sometimes in the philosophy course, and as an optional or compulsory subject it is included as a rule in the Honours course of all these subjects.

Other Sciences.—As time goes on, more and more subjects closely connected with the state tend to develop into independent sciences. Public Administration, for example, which examines the principles and practice of governments, and Comparative Politics, which, by the comparative method, examines the various kinds of governments, trying to deduce general laws therefrom, both promise to become independent sciences. With other sciences already recognised as such, Political Science has more or less close relations. Jurisprudence, or the science of law, is intimately concerned with the state; Anthropology, the science which deals with the existence, development and interpretation of customs, dress, superstition, religious festivals, and social institutions generally; Ethnology, the science of races; and Religion, especially the comparative study of religion, which shows the effect on political institutions of religious beliefs and observances—all these sciences in a greater or lesser degree are related to Political Science.

Diagrammatically the relation of Political Science to the other social sciences may be shown in a general way thus :—



CHAPTER II

THE NATURE OF THE STATE

1. DEFINITION OF THE STATE

Different Meanings of State.—Before attempting to define the word "state" as used in Political Science, we must first dismiss a certain number of verbal ambiguities which arise chiefly from the inexactness of every-day language. The word is often used indiscriminately to express a general tendency or idea. Thus in phrases like state control, state railways, state education, it indicates the collective action of the community through government as contrasted with individual management. In "state regulation" and "state management" the word state is used where, strictly speaking, government should be used. In the phrase "church and state" the organisation of civil power as distinguished from religious power is indicated. Again, we speak of the Indian States, the

State of Prussia in Germany, the State of New York in the United States of America, the State of Victoria in the Australian Commonwealth. Not one of these uses is scientifically correct. One of the essential characteristics of a state is sovereignty, a characteristic lacking in every one of these so-called states. Unfortunately no general name has found acceptance even in Political Science for these "states", all of which are only units or parts of a state in the scientific sense of the term. The word "province" might be usefully employed, but as yet it has not found favour, and at present the double use of the word state continues in both scientific books and popular language. At the outset of his studies in Political Science, the student is warned to note this confusion. Finally, we have to bear in mind that there is the juristic meaning of state, in International and Constitutional Law, which regards the state as an artificial person with definite rights and duties, as distinguished from the natural person or ordinary citizen.

Definition of the State.—We have already seen that Political Science is a particular branch of the science of society, or sociology. Society is composed of a number of individuals living together and entering into relations with one another. The state is a type of society regarded from a definite point of view. Social relations vary, and of these political relations form one class: it is with these that we are concerned in Political Science. The political life of man lends colour to and borrows colour from his other social activities. The political relation, however, does not either sum up or control the other social relations of man. Political order is one of several orders—social, moral, religious—and its distinguishing characteristic is the state, with its visible human institutions of laws and government.

Definitions of the state are as numerous as are the books written on the subject. Quoted below are a number of modern definitions, given by writers from various points of view. The first two are by well-known English lawyers—Holland and Phillimore.

Holland defines the state thus:—

"A numerous assemblage of human beings, generally occupying a certain territory, amongst whom the will of the majority, or of an ascertainable class of persons, is by the strength of such a majority, or class, made to prevail against any of their number who oppose it."

Phillimore says that the state is

"A people permanently occupying a fixed territory, bound together by common laws, habits, and customs into one body politic, exercising through the medium of an organised government independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into all international relations with the communities of the globe."

Bluntschli, the German writer, says :—

"The state is a combination or association of men in the form of government and governed, on a definite territory, united together into a moral organised masculine personality, or, more shortly, the state is the politically organised national person of a definite country."

Sidgwick, the well-known English writer on Philosophy, Political Economy and Political Science, says that the state is a "political society or community, i.e., a body of human beings deriving its corporate unity from the fact that its members acknowledge permanent obedience to the same government, which represents the society in any transactions that it may carry on as a body with other political societies." This government, he says, is independent, in the sense that it is not in habitual obedience to any foreign individual or body or the government of a larger whole.

Professor Burgess, of Columbia University, New York, one of the greatest modern authorities, says that the state is a "particular portion of mankind viewed as an organised unity." Dr. Willoughby, another recognised American authority, says that the state exists "wherever there can be discovered in any community of men a supreme authority exercising a control over the social actions of individuals and groups of individuals, and itself subject to no such regulation." Dr. Woodrow Wilson says simply that the state "is a people organised for law within a definite territory."

These definitions do not agree in all details. Some of them are given from particular standpoints, and are open to criticism on certain points. They contain, however, all the essential ideas necessary to the definition of the state. The state is a concept of Political Science and a moral reality which exists where a number of people, living on a definite territory, are unified under a government which in internal matters is the organ for expressing their

sovereignty, and in external matters is independent of other governments.

2. THE ESSENTIAL ELEMENTS OF THE STATE

The essential elements of the state are thus : first, a number of people, or population ; second, a definite place of residence, or territory ; third, an organisation unifying the people, or government ; and, fourth, supremacy in internal matters and independence of external control, or sovereignty.

1. **Population.**—It is obvious that to have a state, which is a human institution, a population of some kind is necessary. No state can exist in an uninhabited land ; nor can there be any state if there is no population beyond a single family. The family may be a centre round which the state grows, but till there is a series of families there can be no state. It is impossible to fix a definite number of men for a state. In the modern world we are familiar with states in which the populations vary from five millions to three hundred millions. Huge states of the modern type were quite outside the range of the old Greek ideas, where the city-state was the working ideal. The city-state, in population, was about the size of a small modern municipality. The idea of Aristotle, the philosopher of the city-state, was that neither ten nor a hundred thousand could form a good state : they were both extremes. Many centuries after Aristotle, Rousseau, the French philosopher, who lived when vast states of many millions existed, thought ten thousand the ideal number. Both these writers considered small numbers essential to good government. In the modern world, other principles, such as federalism, empire and nationality, are the determining factors in the size of the state, while the perfection of government which Aristotle and Rousseau thought attainable only with very limited numbers is now secured by what is known as local government. In the modern world the population of states varies greatly, from the few thousan[d] of Monaca to the many millions of Russia, and the Unite[d] States. No limit, either theoretical or practical, can be laid down in this respect.

2. **Territory.**—Without a fixed territory there can be no state. The Jews, for example, did not form a state till they definitely settled in Palestine. Conversely, the Huns of Attila, in spite of their prowess and their leaders, broke up

because they had no real fixed territory. Nomadic tribes, which wander from one part of a country to another, cannot form a state.

As in population, so in territory, no limit can be laid down. States exist to-day with areas varying from eight square miles, as in Monaco, to about nine million square miles, as in Russia. Small states, though they benefit by being compact and easily governed, are at a great disadvantage in matters of defence and resources as compared with larger states. Unless guaranteed by larger states, small states are liable to invasion and annihilation by greater and more powerful states, as shown by the fate of Belgium in the Great War. In very small states like Monaco and Guatemala, the resources are insufficient to give their citizens the fulness of life and development which larger states can afford. Their disadvantages are similar to those of small scale as compared with large scale production.

The older writers on political Science almost universally condemned larger states because of their unwieldiness. To govern well a wide stretch of territory appeared quite impossible to them. Two things have completely altered that point of view—first, the rapid development in transit—trains, steamships, the telegraph, aeroplanes and wireless telegraphy, and second, the development of local self-government—in the wider sense, as in the British Dominions with responsible government, and the "states" of a federal union, and in the narrower sense, as in municipalities, counties and districts. No principle can be laid down as to the size of a state. Size, moreover, is no index of greatness. Great Britain is much more powerful than many states ten times her size. There are many other elements connected with territory which make for greatness: climate, the temperament of the people, geographical configuration, and natural resources are all important factors in deciding both the size and the greatness of a state.

Climate.—That climate has an important effect on the development of states may be judged from the fact that the highest political development of the world has been reached in the temperate zones. Extremes of both heat and cold affect the physical and mental constitution of the individual and also the natural resources of a country. Extreme cold,

as in the Arctic regions, makes the struggle for existence against nature so hard that political life is only a secondary consideration. Extreme heat, as in the tropics, leads to luxuriant vegetation, ample and easily obtainable food, and the enervation of the people. Climatic extremes, whether of heat or cold, tend to produce a fatalistic outlook on life which weakens the mainsprings of personal effort. The most energetic political life in the world for these reasons has been led in the temperate zones, though, with the growth of education, and the advancing control of mind over matter, the peoples living in the areas of climatic extremes may develop as surely as, though more slowly than those in temperate parts.

Geographical Configuration.—Geographical configuration is also important in fixing the areas of states, as well as giving a peculiar cast to the character of particular peoples. A glance at a map of the world will show how the areas of many states are fixed by boundaries provided by nature, such as the sea, mountain chains and rivers. Geographical unity is an important predisposing cause to political unity, as shown by Great Britain, where neighbouring nations clearly marked off from the rest of the world joined to make one state. One of the chief bases of the unity of India is the complete self-containedness of the country, bounded as it is by the sea and the greatest mountain ranges in the world. In the past the many states or subdivisions contained in India were marked out by natural boundaries, such as mountain ranges, rivers and deserts.

Geographical conditions have also had much influence on the creation of states. In the valleys of the Nile and the Euphrates, for example, the early Egyptians and Assyrians pitched their camps where nature provided the best conditions for a settled life. Geography also helps to determine the activities of peoples. Rome, for example, became the greatest empire in the old world largely because of her geographical position, which gave her access to other countries by sea. The maritime activity of Britain is explained by the very favourable geographical position she occupies in Europe. England, France, Spain, and Portugal, from their natural positions, have been the greatest discoverers, colonisers and empire-builders of the modern world. The geographical position of states also largely determines the

policy of their governments. England, the United States and Japan are at present the greatest mercantile nations of the world. They all have powerful navies, to protect not only their shores, but their mercantile fleets. The very existence of England depends on her sea trade; hence arises the necessity of the very powerful British navy. Germany, on the other hand, used to be bounded on three sides by powerful states, with no natural defences. Germany therefore was a military state, and the necessity for defence compelled her neighbours also to support large armies. Germany also has a fairly large sea-board, and her ambitions were to dominate the world. She therefore built a powerful navy, but her geographical position, especially in relation to Britain, made that navy of little value in the Great War[1].

Where nature provides defences, the energies of the people can be turned into the channels of peace, not of war. The best defences are the sea and mountain ranges though, with the new aerial war, natural defences are becoming less important. With the advance of invention in transportation, irrigation and drainage, geographical configuration as a factor in development is becoming of less importance as compared with the ingenuity of man.

Resources.—Resources, in cereals, minerals, etc., have frequently determined the size of states. National strength in the modern world rests on national wealth, and such wealth depends on the character of the people and the produce of the land. Desire for national expansion often arises because of the lack of some important mineral, such as coal or iron. In modern warfare, the possession of these minerals is indispensable for both defence and attack. The resources of a country also determine its economic activity and economic activity reacts quickly on political life. Discoveries of new wealth lead to immigration, exhaustion of old wealth to emigration. Wealth excites covetousness, covetousness leads to wars of plunder by the stronger on the weaker.

Policy.—Besides geography and natural resources, the chief influence in deciding the size of states has been policy. Rulers, from personal ambition or a patriotic idea of aggrandising their own nation, have, through conquest, treaties, or occupation, enlarged the boundaries of their own

[1] The First World War.

states, usually at the expense of other states. The many elements which enter into policy, such as empire, nationality, and desire for natural resources are matters for the student of history. The whole range of political history is a commentary on them.

3. **Government.**—For the existence of a state, government is necessary. Government is the organisation of the state, the machinery through which the state will is expressed. A people settled on a definite territory cannot constitute a state till some political organisation has been formed. The organisation may vary in kind and complexity. Government is the organisation which shows that the essential relation of command and obedience has been established. Government exists wherever that is confirmed, whether it is in a vast organisation like that of the United States, or in the simple tribal government of the Australian aborigines. The government is the organisation of the state, the organ of unity, the organ whereby the common purposes which underlie that unity are definitely translated into practical reality. It is the focus of the common purposes of the people. As Professor Giddings says, the state is the "chief purposive organisation of civil society." Government is the outward manifestation of the state, and as such is the organisation of the common purposes of the people. It is the organ of the community.

4. **Sovereignty.**—The fourth characteristic of the state is sovereignty. This is the supreme element of statehood. It differentiates the state from all other social organisations. Other associations exist which can claim a number of people with separate territory and a governmental organisation, but there is only one association which has all these elements *and sovereignty.* That association is the state. Sovereignty, in general terms, means supremacy. The state is supreme in both internal and external matters. This sovereignty is expressed through government, which is supreme in internal matters, and independent as regards external governments. The subject of sovereignty is discussed separately in a later chapter.

Other Characteristics.—Population, territory, government, sovereignty are thus the essential characteristics of the state. Several other "essential" characteristics are given by writers, but most of them are implied in the above four. Professor Burgess, for example gives all-comprehensiveness, exclusive-

ness and permanence as peculiar characteristics of the state, with sovereignty as the most essential principle. All-comprehensiveness means that the state embraces all persons and associations of persons within the given territory. Exclusiveness means that there can be one and only one organisation of the state. Both these are essential to government and sovereignty, as we have explained. Permanence means that, whatever the form of government may be, the state always continues to exist. Governments change from time to time; at one period government may be monarchical in form, at another democratic. One government may be subdued by another or disappear by being absorbed into another, but mankind must continue to live within a state. The state is essential to the being and well-being alike of man. As Aristotle said, it arises from the mere necessities of man's existence and continues to exist for the sake of the good life, or for the well-being of man. Permanence therefore does not mean that this or that state continues for ever. So long as this or that state satisfies the above criteria, it does continue permanently. There is an English constitutional maxim which says "The king never dies." Though the king dies or the form of government changes, the state is continuous. Individual states do disappear, but their disappearance is only the disappearance of a type of government, not of the state as such. The state is permanent throughout, as permanent as the human minds the unity of which it is the fundamental expression.

The Organic Nature of the State.—Bluntschli, in common with many other writers of a similar cast of thought, says that the state is organic, that it is a moral and spiritual organism, and masculine. These are allegorical descriptions corresponding to particular points of view from which the state may be regarded. They are not of the essence of the conception of state: in fact, as we shall see in our analysis of the organic theory, they may be expressions of mistaken points of view and theories.

The Idea and Concept of State.—German writers distinguish two meanings of the word state—the idea and the concept of the state. The same is true of the word society, which, as Professor Giddings points out, means both the individuals entering into social relations and the union which results. According to the Germans, the concept of the state

is the result of concrete thinking. It refers to the actual political types of history. Among these types there is one common element or essence, that is the state. All actual political types, present, past and future, have this common essence, embodying the idea of the state. The distinction is that of the state as it is, as a matter of organisation, and the state in general, differences of organisation being left out of account. Some writers, as Bluntschli and Professor Burgess, regard the idea of the state as the state as it ought to be, i.e., its final completion, or perfection.

3. STATE, GOVERNMENT, NATION, NATIONALITY

In the English language certain terms of Political Science are very nearly related in meaning, and the student must be able to appreciate the scientific uses of the words. Much of the difficulty, as we have seen, arises from the carelessness or inexactness of everyday language. All science requires definition, and before we proceed we must distinguish, and define the words state, government, nation and nationality.

State: Government.—Between state and government we have already drawn the line of distinction. *State* is used to denote the sovereign unity of a number of people settled on a fixed territory and organised under one government. *Government* is the practical manifestation or organisation of the state and essential to it. In ordinary language state and government are often used interchangeably, but for Political Science a definite distinction is necessary. Government is the machinery through which the ends or purposes of the state are realised. The state is largely an abstraction; government is concrete. Governments change or die; the state is permanent. Government has power in virtue of its relation to the state. It is not sovereign; it has power only because the state grants it power. It exercises sovereign power because it is the organisation or practical medium of the sovereign state. It is not even necessarily identical with the form of state.

The student must familiarise himself with this distinction as it is the solution of some of our most difficult problems, notably sovereignty. Much of the confusion in older writings on Political Science is due to the failure to separate state from government. Hobbes, for example, the upholder of the seventeenth century absolutist theories, declares, in

his *Leviathan,* that, if a sovereign dies, the most minute arrangements must be made for the succession to the throne, otherwise the commonwealth, or state, will be dissolved. But the commonwealth does not depend for its permanence on the adventitious succession of kings. The king is part of the government, but he is not the state. Kings come and go; but the state continues to exist as long as the common mind on which it is founded is able to express itself.

Nation : Nationality.—The words nation and nationality have a common origin. They come from the root *natus,* the Latin word meaning *born.* Modern English usage, however, has given distinct meanings to the words. Yet here again language difficulties cause confusion. The ambiguity is due partly to our inexact everyday speech, partly to dissension among Political Science writers and partly to the difficulties of translation.

Only in very recent years has a proper distinction been drawn between *nation* and *nationality* in the English language, and as yet this distinction, far from being observed in current speech, is not even universally accepted by writers on Political Science and History. Many writers still use "nation" in our sense of "nationality," and prefer to use "nation-state" for "nation," in the sense used in this chapter. This confusion in English is increased by the use of the word *nation* in the German language. In the German language there is a word *nation.* which does not express the meaning of the same English word. The English equivalent for the German *nation* is *nationality.* The English word *nation,* in spite of the old casual practice and the persistence of some writers (e.g., Dr. Willoughby in his *Nature of the State*), has definitely a political signification, which the Germans denote by the word *volk,* which is usually translated into English as *people.* The English word *people* (as also the French *peuple*) has its nearest German equivalent in *nation,* the English word *nation* having its parallel in the German word usually translated *people.* The Germans have etymology on their side in the ethnic sense of their word *nation* (from *natus,* born). But the English language has given *nation* and *nationality* distinct meanings, and there is no reason to confuse issues simply because of etymology. Science demands as exact definitions as possible, and if on the one hand popular usage is vague and often wrong, on the

other hand there is no reason to divorce scientific from popular usage in words, except (as in the present case to a certain extent) when absolutely necessary.

Nation : State.—*Nation* is very near in meaning to state: the former has a broader signification. It is the state *plus* something else: the state looked at from a certain point of view—viz., that of the unity of the people organised in one state. Thus we speak of the British *nation,* meaning the British people organised in one state and acting spontaneously as a unity. On the other hand we should have hesitated to speak of the Austro-Hungarian *nation,* though we could speak perfectly correctly of the pre-war[1] Austro-Hungarian *state.* There was not that requisite unity of spirit in the old Austro-Hungarian Union to make it a nation. This distinction of nation and nationality is of paramount importance largely because it has not been observed till quite recently in the literature on the subject. John Stuart Mill, whose chapter on Nationality—in his *Representative Government*—is a classic on this subject, gives a good lead to thinkers by giving clear ideas on both the subject and name of nationality; but even in Mill's works the distinction between nation and nationality is not brought out. Though T. H. Green, the profoundest of modern English political thinkers, does not deal directly with the subject of nationality, he gives, in his *Principles of Political Obligation,* one or two very apposite passages regarding the meaning of the word *nation.* "The nation," he says, "underlies the state," and, again, he characterizes the state as "the nation organised in a certain way." He also points out that the members of a nation "in their corporate or associated action are animated by certain passions arising out of their organisation." Till recently nation and nationality have been used interchangeably; but it is far better to use them—indeed many present day scientific writers do—as two separate terms. As yet the unfortunate thing about their separation is that they have to share the common adjectival form "national." They both have the same root, *natus* (which shows a racial substratum of meaning), but the one, *nation,* has definitely become political in meaning, the other, nationality, while it also has a certain political content, lays emphasis on the root meaning of common birth and other

[1] The First World War.

common elements (language, traditions, etc.), usually accompanying common birth.

Meaning of Nationality.—Nationality is a spiritual sentiment or principle arising among a number of people usually of the same race, resident on the same territory, sharing a common language, the same religion, similar history and traditions, common interests, with common political associations, and common ideals of political unity. Territory, race, language, history and traditions, religion, common interests, common political associations, and common hopes of political unity are the elements on which nationality is based. They are the basis of nationality, not nationality itself, which is a spiritual principle supervening when some or all of these elements are present. Not all of these elements taken together, nor any one of them, nor any combination of them, will make nationality. Not one of the elements is absolutely essential; nor are all of them taken together essential. But every nationality has as basis some of them. Nationality is spiritual. The physical element *must* be accompanied by the spiritual; otherwise, there is a body but no soul.

Our distinction of state, nation and nationality may now be made clear by saying that the nation is the state *plus* nationality. Almost every nationality either has been a state (as the Scots), or aspires to be a state, whether it be a new state or the rehabilitation of a previously existing state (as the Poles or Czechs before the Great War). A nationality may be none the less real though it does not wish to become a complete organic state. Scotland, for example, does not wish severance from the British nation. The cry for Scottish home rule has few supporters : yet the Scotsman is one of the most distinct persons in the world as regards his nationality. It may be said, however, that a nationality which rests on its past glories and does not wish to be a distinct state is in the process of being lost, or of being fused in a greater whole. The Scots may be said to be in the process of fusion in "British" nationality. The Americanism "Britisher" already supplants to a large extent, to members of other nations at least, the older distinctions of English, Scottish, and Welsh. The preservation of nationality depends on the preservation of the social and political institutions of the populations forming the nationality. These may be preserved without absolute autonomy. A federal system,

which harmonises the desire for self-government with the fact of dependence on a wider state, may fully satisfy national needs.

4. THE ELEMENTS OF NATIONALITY

Common Residence.—Common residence on common territory is a very usual accompaniment of nationality but it is by no means either essential or universal. A population living together, definitely settled on a given territory, will naturally tend to have a uniformity of culture and experiences, or, conversely, a population living in the cyclopean "dispersed state" of which Aristotle speaks, will more likely form groups with different experiences and purposes, and thus prevent the growth of the "friendship" so essential to national fusion. Continued residence on a fixed territory is rightly set down by most writers as one of the first elements of nationality. It is essential, indeed, to the growth of nationality, but it is not essential to the continuance of national feeling. A nomadic tribe cannot form a nationality so long as it is nomadic; but if it settles down for a long period and develops, it may become distinctly national. If this tribe by any chance resumes its wandering, quite probably it will preserve its nationality. A glance at the existing nationalities of the world will show firstly, that most nationalities have a given territory, the territory and nationality giving their names to each other (Scotland for the Scots, Denmark for the Danes, France for the French, etc.). Secondly, there are many nationalities distinctly marked as such which have not achieved this ideal of a country of their own (as the Slovaks, Slovenes, and Ruthenians in Austria-Hungary before the Great War). Thirdly, several nationalities are scattered throughout the length and breadth of the world. This last point shows that common residence on common territory must not be regarded as either a universal characteristic of nationality, or essential to its vitality. Migration does not affect nationality. An Englishman, Scotsman or Irishman is English, Scotch or Irish from one end of the world to the other. The Jews have preserved their nationality in spite of their dispersion. The Czechs, till they achieved nationhood, were as active nationally in the United States as in Bohemia, their home. So also were the Slovaks. One of the biggest and most clearly marked European nationalities, the Poles (though they have still a Poland), were, and are,

almost as dispersed as the Jews; yet the Pole keeps his nationality in alien environment, even to the third and fourth generation. Dispersion may very easily lead to extinction of nationality, especially if the members of the nationality come into contact with a more virile culture. A weak nationality always tends to be swallowed up by a stronger. Its culture disappears, or is assimilated by the stronger one. Unless the members forming a nationality are sufficiently strong to transplant their own home lives, their nationality is in danger of decay. The United States furnishes a good example of how cultures are fused. The descending generations of Czechs, Slovaks, Ruthenians or Germans usually become thorough-going Americans.

Community of Race.—One of the most universal bases of nationality is community of race. This unity of race is characteristic of most nationalities, but here again one must not be too ready to make it an unqualified necessity of national solidarity. For one thing modern races are so mixed that it is difficult to say what is one race and what is another race. Even the science of races, Ethnology, gives no undisputed theory of races. Opinion on many racial questions among experts is, in even leading questions, confusedly divided. The racial bond of nationality, however, need not be so exact as the science of races demands. Belief in a common origin, either real or fictitious, *is* a bond of nationality. Every nationality has its legendary tales of its non-historic origins, whether it be the Patriarchs of the Jews, or Hunyor and Magyor of the Huns and Magyars, or the well-known stories of Greece and Rome. Scientifically speaking, a nationality cannot be regarded as a pure family descent. The origins of clans or tribes may, with a considerable degree of truth, be ascribed to some single progenitor, but national feeling cannot emerge without some intermixture of blood. The *ius connubii*, or right of intermarriage, must as a rule precede it. A notable instance presents itself before one's eyes in India. The caste system is essentially non-national. The essence of the Hindu caste system is separation; the essence of nationality is solidarity. Were nationality dependent on this *ius connubii* alone, there could be no real nationality in India; but, of course, as has just been pointed out, no single ingredient of the list given above is essential to nationality. Race-unity is one of the strongest bonds, not

because of the ethnological signification of race, but because it implies the further unities of common language, common traditions, and common culture. Were the real race issue to be the criterion, some of the most distinct of modern nationalities would at once break up the theory. The English and Scots are, to a fair extent, ethnologically the same, but they are distinct nationally. Germans and English, Dutch, Danes and Scandinavians, are racially more or less homogeneous, but nationally they are quite distinct. The United States—the most interesting study in nationality in the world—is racially very diverse, but nationally "American."

Community of Language, Traditions and Culture.—Community of language, traditions and culture are closely connected with community of race. Language and race usually go together. Even modern Ethnology uses terms which strictly belong to linguistic divisions. The word Aryan, for example, is, properly speaking, a linguistic term, but it is universally used to designate the "race" of people using Aryan languages. So it is with terms such as Ural-Altaic and Finno-Ugrain, used to distinguish "races." Most writers on nationality have laid great emphasis on the necessity of common language. Fichte, for example, one of the chief apostles of German nationality, declared that nationality was a spiritual thing, a manifestation of the mind of God, its chief bond of union being language. Language is developed from, and connected with, common experiences, interests and ideals. It really forms the basis of the other elements. Community of interests or ideals is no bond of unity unless they can be understood, and language is the vehicle of understanding. Most of the recent European national movements turned largely on national laguage, e.g., the Polish and Bohemian movements. The obverse is seen in the German and Magyar policy of suppression of languages of subject nationalities. That language alone must not be taken as a determinant of nationality is shown by the United States, which uses the English language but has its own nationality; and again by Switzerland, in which there is one nationality with three distinct languages.

This community of language, implying common intercourse, common culture, and, as is usually the case, accompanying a real or fictitious common origin and common history, is vitally important to nationality. The greatest

barrier to intercourse between peoples used to be mountains and seas. These are now overcome, but there remain the barriers of language, and in this connection the modern world witnesses two diametrically opposed tendencies. On the one hand, many zealous people believe, and try to translate their faith into fact, that there should be one universal language. On the other hand one of the chief pleas of all nationalists is language. Thus Bohemia for the Czechs means a Czech language for a Czech people. The national movements of the Slovaks and Slovenes and other small nationalities mainly turned on language. At the present time there are distinct movements in India in favour of one Indian language and for the encouragement of all Indian languages.

Community of Religion.—Religion is an important basis of nationality, but history provides many examples of nationalities which have developed in spite of religious differences. An important distinction must be kept in mind in this connection. National union, other things being equal, is not likely to be strong and lasting where there are fundamental differences in faith, as between Christianity and Mohammedanism. Nationality may develop in spite of difference of *sect*. The Serbo-Croatian national movement is a case in point. The Serbs are mainly Orthodox; the Croats, almost to a man, are Roman Catholic. The language of Serbs and Croats is the same (though written in a different script), their traditions and culture are similar, but their religious sects are distinct. None the less the bridge of union has been built in spite of sectarian differences. In the new Serb, Croat, and Slovene State, Yugoslavia, which includes the old Serbia, Montenegro, Bosnia, Herzegovina, Dalmatia, Croatia-Slavonia, Slovenia, and Voyvodina, there are over one and a quarter million of Moslems who must either migrate from a unified Yugo-Slavia or be content to remain a hostile minority. The Magyars and Turks, sons of the same legendary father, are racially the same, with close affinities in language; but their religious separation into Christians and Moslems has for ever destroyed hopes of national reunion. Religion can undoubtedly be a strong incentive to national feeling. The identification of Protestantism with patriotism, for example, made England defeat Spain in the time of the Armada. The state and church for many centuries in western history were so much

interrelated that the finest logicians of the time could not satisfactorily demarcate their spheres. Their affairs were so inextricably connected that in mediaeval and early modern times state wars were church wars and church wars state wars. The conjunction of church and state meant very intense patriotism; and in the modern world, where the church has, relatively to the state, receded to the background, patriotism is based on other and new ideals. Yet this also must be noted that religions, either as a whole or in their sects, are powerful agents of dissolution.

Political Union.—Political union, either past or future, is one of the most marked features of nationality, so marked indeed that of the various unities it may almost be said to be the only essential. A nationality lives either because it has been a nation, with its own territory and state, or because it wishes to become a nation with its own territory and state. Most of the vocal nationalities of the modern world depend for their national vitality on the fact that they aspire to nationhood. The extreme expression of this tendency is the cry "one nationality, one state"—an aspiration which, if carried to its logical extreme, is dangerous and deleterious. The feeling of nationality, in fact, often emerges only through opposition of the ideals of a subject unified population to those of its masters. Misgovernment is a prolific parent of nationality. On the other hand, a population living for a considerable period under one state, if that state is tolerant in its ideas and practice, tends to become one nationality. A prominent example is the United States, where peoples of many different nationalities have been fused in the one American nationality. The terms German-American, Czech-American, and like, indicate the process of fusion. The population of the United States is composed largely of immigrants who in the first generation are pure Englishmen, Scotsmen, Germans, Poles, Magyars, or Czechs. Their children become political half-castes, and the third and fourth generations lose their parental prejudices and become pure Americans. Common political union is the most powerful, though not the only agent in such a fusion.

Community of Interests.—Common interests are likewise closely connected with the development of nationality. A population which is clearly marked off from others by characteristic commerce and industries tends to develop a

characteristic nationality. These interests need not be merely commercial. They may be diplomatic. Common interests are rather aids towards strengthening union than fundamental agents of union. They have had their importance in conjunction with other elements more than by themselves. They have played their part in nationalities such as the Dutch and Belgian, but, were they the sole determinants, Holland and Belgium would probably not exist at all. They were obvious considerations in the Anglo-Scottish Union of 1707, but they are quite discounted in North America where the material interests of the United States and Canada are very much the same. With the co-operation of other agents, we see it working in the British Dominions where distinct colonial nationalities in the Australians, South Africans, etc., are visibly developing.

Conclusion.—Nationalities are based on some or other of the above factors; but nationality is spiritual, formed by common ideas acting on a number of minds. Its natural basis may be one element or a combination of elements: in itself it is essentially spiritual, usually seeking its physical embodiment in self-government of some form. Self-government once attained, the national ideal remains no longer an ideal but becomes a realised fact, and is therefore dormant, to be revived by some external danger to the state. The various "unities" given above are the chemical elements of the protoplasm; the ideal gives the life. It is necessary to emphasise this, for many theorists have tried to sum up nationality in one, some or all of these "unities". Certain writers have argued that the economic motive (common interests) is the main bond of nationality. Economic forces have played their part, a powerful part, in moulding new nationalities, and states have not been blind to the importance of this force. The Germans, for example, tried to supplant Polish nationality by "planting" Poland with Prussian peasants; but history, instead of teaching how economic forces have made nationalities, shows rather how nationalities have lived in spite of economic forces.

Nationality may exist before national ideals are definitely talked of in the press or on the platform. The consciousness of social union emerges from the natural fact of social grouping, but only gradually does the national self emerge as a definite group force as distinct from other group forces.

From the lowest form of tribal group-consciousness the feeling of community develops till, in more advanced forms of social organisation, it is complex and difficult to analyse. The child is born into his social group, and gradually assimilates the particular customs, traditions, mannerisms and mental outlook of his group. He feels a pride in his own characteristic culture, even though it may be only parochial. His culture is his own : he rejoices in it, and feels as a personal insult any slur cast on his own community. Nationally, thus, the individual becomes a type living in a society of such types and to preserve his community he is willing to surrender himself for the general good. Not every individual, of course, is as intensely national as this. But national feeling always has the double aspect of altruism and egoism, each of which aspects may go to extremes. The extreme of egoism leads to the desire of domination, to the pride of type which insists on the imposition of its *Kultur* or mental and moral habit-code, on everyone else. This, in part at least, is the explanation of the German imperialism which led to the Great War. The extreme of altruism takes the form of an exaggerated, nervous, unreasoning patriotism resulting in sacrifices superficially noble but in reality wasteful.

5. NATIONALITY AS A FACTOR IN PRACTICAL POLITICS

The Growth of Nationality.—As a principle of practical politics nationality belongs to the nineteenth and twentieth centuries. The Congress of Vienna in 1814-15, at which the map of Europe was resettled after the Napoleonic struggles, represents the high water-mark of the previous determining factors—policy and dynasty. In the eighteenth and previous centuries boundaries were fixed according to the policy of individual states or the desires of individual rulers. Kings waged wars for aggrandisement of their territories on the old feudal theory that to rule and to own were synonymous. Personal ambition or greed, arising often from the patriotic desire to enlarge the state boundaries and add large numbers to the population, made supreme the idea of conquest as the decisive element in fixing the size of states. Heedless of the wishes of the people concerned, the stronger seized the territory of the weaker. Sometimes small states were allowed to exist, not from any desire to meet the wishes of the people,

but to suit the defensive or offensive aims of the greater states.

Though feudalism had disappeared long before the eighteenth century, certain feudal ideas survived the actual feudal system. One of these—and a most important one—was the idea that the king was owner of the nation's land. This led frequently to division and sub-division of territory among the king's family, just as a private landlord often does now. Large portions of territory could be inherited in this way, and in the same way, could be given as a gift or dowry. State boundaries, therefore, were largely at the will of royal families or dynasties. For centuries this was the accepted rule; the people as well as the rulers were imbued with the old feudal ideas. Neither did the kings take the will of the transferred or conquered peoples into account, nor did the people themselves regard such consideration necessary. It is no matter for surprise then that frequently in one state resided the most heterogeneous collection of peoples, castes and creeds.

Causes of its Development.—In spite of this, some of the greatest nations in the West achieved nationhood early, and the fact that they had no national difficulties partly accounts for the late appearance of nationality as a practical question. The national boundaries of England, France, Spain—all leading powers in Europe for several centuries—were settled relatively early in modern history. Because they had no national difficulties themselves, they were not likely to be affected by the practical aspect of nationality. Besides the national elements in the wars of modern history, such as the Dutch struggle against Spain, three things have acted together to break up completely the old feudal and dynastical ideas. The first is the spread of enlightenment to the masses; the second, the partition of Poland; the third, the French Revolution.

1. Spread of Enlightenment.—Nationality is a sentiment which is stronger or weaker as the circumstances in which it occurs vary. With the raising of political consciousness by means of education, national feeling is strengthened. Often, it is true, in spite of the ignorance of the masses, the thread of national sentiment has remained unbroken for centuries. Unity has often been preserved for centuries in spite of both conquest and ignorance. With the growth of enlightenment,

the common ideals are not only better understood and appreciated but more talked of and written about. Education raises the dignity of the individual, and brings forward claims of personal freedom. Personal freedom leads to the idea of national freedom. The demand for personal freedom leads to democracy, and nationality has developed by the side of democracy. The Great War was the culminating point of the struggle, for in that war democracy was fighting autocracy, and nationality fighting dynasty.

2. **The Partition of Poland.**—The Partition of Poland, by which dynasties by superior force took advantage of an unwilling people, stands out as one of the most callous acts in history. Poland had an elective kingship, which her neighbours, Russia, Prussia and Austria regarded as dangerous to their own hereditary principle. In 1772, at the suggestion of Frederick the Great of Prussia, these three powers agreed to what is known as the First Partition. Each received a certain amount of territory, but Poland, roused by their theft, abolished the elective in favour of a hereditary monarchy, and began to reform herself in other ways. The fact that Russia supported the old system drove the Polish rulers to ask the help of Prussia. Prussia not only refused assistance, but sent an army to occupy part of Poland. This led to the Second Partition in 1795, whereby Prussia, Russia and Austria divided the whole of Poland among themselves.

Like the Jews of old, the Poles scattered to all parts of the world, carrying with them not only burning indignation at the rapacity of the neighbouring dynasties, but also the fervid desire for the re-establishment of their old state. They became political agitators in every state of Europe, and so strongly did they press their claims that thinkers were forced to recognise that there must be some juster principle for settling the boundaries of states than that shown by the plundering rulers of Russia, Prussia and Austria.

3. **The French Revolution.**—The French Revolution completed the work of the Polish partition. The French Revolution was not primarily a matter of nationality, for the French national boundaries had been settled long before 1789. It was primarily a social revolution, but indirectly it fanned the national flame. The execution of the king, Louis XVI., was a severe blow to the rights of dynasties. If the French, with their nationhood complete, could behead a king, surely

other nationalities, ruled not by their own but by foreign rulers, could dispute the rights of dynasties. Not only so, the French Revolution awakened the peoples who had for several centuries been sleeping under the feudal system and its results. The French Revolution threw off the old social and political order and decided to begin anew. To begin anew required the formulation of new principles of political order. The central doctrine was liberty, interpreted both as individual and constitutional liberty. Class privileges and effete constitutions alike had to be abolished, and the new order was to be founded on the sovereignty of the people. The doctrine of the general will propounded by Rousseau, the apostle of the French Revolution, implied the rights of nationality and self-determination. The people, he said, should be free to determine with whom they are to associate in political union. The triumph of democracy was the first result of the Revolution. This was succeeded by the conquests of Napoleon, which apparently dealt a death blow to nationality. At the Congress of Vienna in 1814-15 the map of Europe was drawn on the principle not of nationality but of dynasty. Instead of granting the right of self-determination to nationalities, the Congress restored the pre-Revolution system. Poland was not restored to statehood ; Norway was joined to Sweden, and Belgium to Holland ; Germany and Italy were re-established in their possessions of the previous century.

The overthrow of Napoleon, like the overthrow of Spain in the Netherlands, was really due to the national forces opposed to him. As the century advanced, national feeling became strong enough to destroy the basis of the Vienna settlement. The Congress left six separate questions of nationality to be solved :—(1) Belgium and Holland, joined as the Kingdom of the Netherlands ; (2) Germany, divided into thirty-eight sovereign states ; (3) Italy, with eight separate governments ; (4) Poland, divided between the three neighbouring powers ; (5) Austria, with several distinct nationalities—German, Magyar, Polish, Bohemian or Czech, Ruthenian, Slovak, Moravian, Roumanian, Slovenian and Italian ; and (6) The Turkish Empire, in which the Turks ruled five distinct Christian nationalities. Practically all these questions have been solved. Belgium separated from Holland in 1830 ; Germany and Italy, each after a long

struggle, achieved their present nationhood in 1871 and 1848-70 respectively. The new principle of self-determination was particularly discernible in the Italian union where some of the smaller states were actually asked to select their government by plebiscite. Greece, Roumania, Serbia, Bulgaria and Montenegro all achieved independence during the century. The Great War was fought largely on the principle of nationality, and the various peace treaties solved the remaining questions. Alsace-Lorraine was returned to France; Poland was made independent; the various subject nationalities of Austria-Hungary were either given independence or were allowed to join those with whom they had political and national affinities.

6. 'ONE NATIONALITY, ONE STATE'

One of the most common characteristics in modern nationalities is the desire to become nations, or to be incorporated in independent states. Their common ideals, it is said, require a common organisation to give them reality. The extreme formula of this idea is "one nationality, one state."

Rights of Nationalities.—It is impossible here to do more than mention a few leading considerations arising out of this doctrine. In the first place, the rights of nationalities are not absolute. No nationality has a right to dismember the state of which it is a part, unless that state so cramps the members of the nationality that the continued existence of the nationality and its traditions is threatened in such a way as to impair the moral lives of its members. All national claims are conditioned by the paramount claims of the state of which the nationality is a part, but the claims of the state may be of such a nature as to make the continued existence of the nationality impossible. In such a case the ultimate issue may be force. The ultimate justification of state and national rights alike is the common good, and in a struggle of nationality and state the issue is to be judged accordingly.

Absorption of Nationalities.—In the second place, while some nationalities may be vigorous enough in themselves to resist the influences of others, that is, strong enough to preserve their national identity, others tend to be absorbed by stronger neighbours. A more advanced or stronger type of civilisation tends to swallow up a weaker. The attempt of the Germans to subdue the Poles by settling Germans on

Polish territory, so far from succeeding, actually resulted in many of the Germans becoming Poles. The Polish nationality, instead of being absorbed, proved itself capable of absorbing others. The same is true of the French in Alsace-Lorraine. But in Germany itself are smaller sections of non-Germans called the Wends, who can scarcely be said to be sufficiently strong to establish a state on national grounds. They will be absorbed by the stronger culture around them. In America and New Zealand potential nationalities in the Red Indians and Maoris have been absorbed by their more virile environment, with a distinct gain to the general forces of civilisation. A similar process is observable in India, where the primitive tribes tend to be absorbed by the stronger civilisations around them, e.g., the Santals by the Bengalis.

The process of absorption is most observable in the United States of America, into which annually pour many thousands of immigrants from Europe. In most cases these newcomers preserve their nationality, but in the second generation they fuse with the Americans.

It is very difficult to say whether any given nationality deserves statehood. Underlying all political life there is the moral and social ideal of the common good. This common good is really the criterion of national life, and, as the view of man is limited, it is impossible to say with any finality whether the incorporation of a given nationality in a state is for the common good. Most thinkers look forward to a final unity of mankind. That unity must be a unity of various types and qualities. Diversification of elements gives a fuller meaning to the unity; on the other hand, too great a diversity may destroy or prevent the unity.

List of Rights of Nationalities.—In the third place, the so-called rights of nationalities, apart from the difficult question of "one nationality, one state" are (1) the right of each nationality to its own language; (2) the right to its own customs; (3) the right to its own institutions. These rights, as we have shown, are not by any means absolute. Language, combined with political community, is one of the most necessary elements in nationality. But it is questionable how far national languages should be fostered. As a rule each language has certain qualities which give it a claim for existence. The song literature of one, the music of another, the peculiar method of expression of another, the interest to the compara-

tive philologist and anthropologist of them all: these may be excellent claims to existence. On the other hand, it may be argued that the erection or perpetuation of linguistic barriers does not serve the well-being of humanity. The common aims and ideals of mankind are best appreciated when they are understood through the same tongue. At the present moment, on the one hand we hear of the rights of nationalities to their own speech, and on the other, of the abolition of the differences between peoples by the institution of a common language. The artificial fostering of language as a national element is a particularly questionable policy. Languages, like cultures, are absorbed by stronger neighbours. Gaelic is practically dead in Scotland, though as a language it will continue to be studied for its literature and philology. In India, there are several hundreds of languages, and it is questionable whether all these languages should be encouraged to become living languages for national groups. Even now there is a strong movement in India in favour of a single language and alphabet. The same is true of customs and institutions. Higher civilisations, without objection from the advocates of the rights of nationalities, have suppressed customs and institutions in lower civilisations which they regarded as evil. Sometimes national customs are suppressed for the salvation of a state in which the nationality is either proving dangerous or is hindering development. Such was the cause of the suppression of the wearing of the kilt, the national dress of the Scottish Highlanders, by the Earl of Chatham after the Stuart rebellions in Scotland. It cannot be said that the suppression injured Scotland, while it helped in the unification of Great Britain.

Internationalism.—In the fourth place, in the modern world, development is taking place in two opposite directions—nationalism and internationalism. Many thinkers consider the final solution of world politics to lie in federalism. Federalism is an attempt to reconcile two opposites—local independence and central government over a large area. The claims of nationality may be satisfied by federalism, a form of government which may be a solution to the difficulties of both nationalism and internationalism.

It is impossible to lay down any hard-and-fast rules or principles. Rights exist in the state, which is founded on the common well-being of man, and the only general prin-

ciple which we can extract from the many-sided question of nationality is that nationality, with national language, customs, and institutions, is to be fostered only in so far as it is conducive to the common well-being.

7. THE ORGANIC NATURE OF THE STATE

The Organic Analogy: Bluntschli's View.—We have already seen that Bluntschli mentions the organic nature of the state as one of its essential characteristics. The state is a living organised entity, not a lifeless instrument. Its organism, he says, is a copy of a natural organism, particularly in the following respects:—

(*a*) Every organism is a union of soul and body, i.e., of material elements and vital forces.

(*b*) Although an organism is and remains a whole, yet in its parts it has members which are animated by special motives and capacities, in order to satisfy in various ways the varying needs of the whole.

(*c*) The organism develops itself from within outwards and has an external growth.

He goes on to show how there is a body and spirit in the state, how it is organised with different functions in its members, and how it grows and develops. He also ascribes to it a moral and spiritual personality, which, in contrast to the feminine church, is masculine.

Historical.—The organic analogy is a very old one, in fact it is one of the commonest comparisons in Political Science. It has come to the forefront since the appearance of the theory of evolution. It appears in Plato, and in Aristotle, who compared the symmetry of the state to that of the body. In mediaeval writers it is particularly prolific, and like most of the theories of that age, it was used as a polemical weapon.

Use of the Theory in the Middle Ages.—Mankind as a whole was regarded as an organism. This idea of organism, clothed in the religious language of the day, was based on St. Paul's statement that the church was a mystical body whose head was Christ. Church and state each adopted the idea, the imperialists holding that the Emperor, and the ecclesiastics that the Pope, was the head in this world of the mystical body. As obviously a two-headed organism was unnatural, some thinkers held that there were two bodies, each with its own head, and both part of a greater body whose

head was God. From this the conclusion followed that, instead of being mutually exclusive, the empire and church should live together in amity, as they were really parts of one whole. Others used the analogy to discredit the state. The soul and body were the counterparts of the church and state, and as the soul is greater than the body, so was the church greater than the state. Not only were the church and empire compared to organisms, but the analogy was used for individual groups and states, and even in these early writers we find excesses of analogy such as occur later in the works of Herbert Spencer. Nevertheless, in spite of many crude comparisons, some of the mediaeval writers show a very reasonable use of the analogy. John of Salisbury, a twelfth century ecclesiastic and philosopher, held that a well ordered constitution consists in the proper apportionment of functions to members of the body and in the proper condition and strength of each member. The members, he said, must supplement each other, and as the body is joined to the head, so the unity of the state depends on their coherence among themselves and with the head. Another writer, Ptolemy of Lucca, starts his deliberations on political matters thus—"For as we see that the body of an animal consists of connected and co-ordinated members, so every realm and every group consists of diverse persons connected and co-ordinated for some end." This is a perfectly orthodox modern view.

Other well-known mediaeval writers, such as St. Thomas Aquinas, Ockham, and Marsiglio of Padua, give the analogy. Ideas which are still very common were all voiced then. The idea of membership, for example, was developed to show the place of the individual in the various political and ecclesiastical groups. Growth, development, differentiation of function, the existence of the nervous system, and other points were used for various purposes, the common centre being the church and state controversy.

Its Modern History.—Passing from mediaevalism to the modern world, we find the analogy common property. Machiavelli uses it with great effect on occasion, while one of the most trenchant chapters in Hobbes's *Leviathan* (entitled "Of Those Things That Weaken or Tend to the Dissolution of a Commonwealth") carries out a thorough-going parallel between the diseases of the body and the weaknesses of a commonwealth. "Amongst the infirmities of

a commonwealth I will reckon, in the first place, those that arise from an imperfect institution and resemble the diseases of a natural body which proceed from a defectuous procreation." And he goes on to speak of the equivalents, in the commonwealth, of boils, scabs, and wens in the body organic, as well as of pleurisy, ague, and lethargy.

The most elaborate modern analogy between the state and the living organism has been given by Herbert Spencer. A brief exposition of his theory will show both its virtues and weaknesses.

Exposition of Spencer's Theory.—Spencer holds that society is an organism. The attributes of each are similar. The permanent relations existing between their various parts are the same. The first point which makes society an organism is its growth. A living body grows and develops; so does society. The parts of each become unlike as the bodies grow, and as they become unlike they become more complex. There is a progressive differentiation both of structure and of function in society, but this differentiation does not mean separateness. The functions are interrelated, so much so in fact that they can have no meaning otherwise. Just as the hand depends on the arm and the arm on the body and head, so do the parts of the social organism depend on each other. Every living body depends for its very life on the proper co-ordination and interrelation of the units. The life of society depends on exactly similar conditions. Another point of comparison is that in each case the life of the whole may be destroyed without immediate destruction to the parts, or the life of the whole may be continued longer than the lives of the units. But between the two there are points of difference. The parts of an animal body form a concrete whole, but in society there is no concrete whole. The parts are separate and distinct. Yet the social organism is made a living whole by means of language, which establishes the unity which makes social organisation possible. The cardinal difference between the one and the other is that in a living body consciousness is concentrated in one definite part of the whole; in society it is spread over the whole. Hence, argues Spencer, not the good of the whole but only the good of the units is to be sought in society. (This is the basis of Spencer's individualism.)

Spencer goes on to show how society grows and develops

like a living body. Both begin as germs, and, as they grow, they become more complex. The structure which they finally reach is far more complicated than the simple unit from which they develop. In the body politic, as in the body natural, growth goes on either by simple multiplication of units or by union of groups. Society never reaches any considerable size by simple multiplication: union of groups makes larger societies. Integration takes place in society as it does in the animal body in the formation of the mass: it also takes place in the simultaneous process of the cohesion of the parts making up the whole.

Spencer gives a number of structural analogies between society and the living organism. Each has its organs—the animal its organs of alimentation: society its industrial structures. Just as in animals of low types there is no real organ, but only a number of parts acting as an organ, so in social development there is a primitive stage where each man carries on his work alone and sells his produce to others. Then, in the course of evolution, comes the cluster of cells in the animal; the social parallel is the group of families clustered together in a fixed locality where each does its own work. Then as the developing animal requires a more active "glandular" organ, so society passes from the household to the factory type. The analogy again is evident in the functions the living organism and society perform. A simple animal, if cut in two, will live on as before: so a simple form of society, such as a nomadic tribe, can easily be divided. But to cut a highly organised animal (as a mammal) in two means death. Likewise to cut the county of Middlesex off from its surroundings would mean death, for the social processes would be stopped by lack of nutrition or supplies. Again, increase in the development of animals means increase in the adaptation of particular organs for particular functions. So also specialisation takes place in society, and specialisation in each, while it implies adaptation for one duty, means unfitness for other duties.

In the social as in the individual organism there are various systems. These are (*a*) the sustaining system, (*b*) the distributory system, and (*c*) the regulating system. The first constitutes the means of alimentation in the living organism and production in the body politic. Just as the foreign substances which sustain the animal determine the

alimentary canal, so the different minerals, animals and vegetables determine the form industrialism will take in a given community. The second (distributory) is the circulatory system in the organic body: in the body politic its parallel is transportation. The vascular system in the body has its social equivalent in roads and railways. The third, the regulating system, is the nervous and nervo-motor system in the animal, in the body politic it is the governmental-military.

Criticism : Uses of and Dangers of the Theory.—The organic analogy in Political Science performs a useful function. It emphasises the unity of the state, the dependence of individuals on each other and on the state as a whole. The individual properly understood is not an individual in the sense that he is distinct from society. Each individual is essentially a social unit. He cannot be separated from society, just as the hand or leg, without losing its virtue, cannot be separated from the body. The state also depends on the individuals composing it. So far the organic idea is invaluable. It points out the intrinsic connection of the individual with the state and the state with the individual. The analogy, again, if properly used, is harmless. One can no more object to a writer saying that the state is like a body than he can to the common analogy that the state is like a building.

Its Practical Effect.—The danger of the analogy lies in the qualification "if properly used." The analogy has been used with various degrees of thoroughness for various purposes. The writers of the Middle Ages used it to prove important points in practical policy; and (such was the condition of opinion of the times) their contentions had far-reaching practical effects. Herbert Spencer uses it as a basis for individualistic theories. He declares that the unity in society is "discrete" and exists for his own good only.

Analogy not Proof.—Spencer, however, recognised the limitations of the analogy in theory, but in his enthusiasm in working out his theory the analogy became identification. The chief fault of the organic analogy is that it is an analogy. An analogy is not a proof. Many essential features of the human body are not obvious in the body politic. The assimilative and reproductive powers of animals have no counterpart in the state. The state cannot react to stimuli in the same way as a living body. It does not grow, live or die in

the same way. Organisms grow by internal adaptation : but the state grows by accretion of new parts, or by conscious effort on the part of its component elements or individuals. This points to the crux of the whole position. An animal body is made up of individual cells, non-thinking units, incapable of action independent of the body. Society is composed of thinking units, capable of exercising will and of acting according to chosen ends. Their action is the action of conscious purpose : the action of cells is mechanical and unconscious. The state has thus no equivalent to many of the most characteristic points of the organism. And when we take into consideration the phenomena of diplomacy, declaration of war, and making of peace (involving " growth "), the analogy is useless.

Possible Results of the Theory.—Further, as already pointed out, cells cannot live away from their body. Individuals are likewise all " social " or " state " individuals by nature and necessity. So far the analogy, in pointing out the intrinsic connection between society and the individual, is good. But to use the analogy in its most thorough-going application may mean either (1) as Spencer says, that the individual must seek his own happiness independently of others because, while the organism is concrete, society is discrete. In this way Spencer, while allowing certain bonds of unity in society, denies the intrinsic relation of the individual to society. In common with most individualists, he desocialises the individual because he finds no single " nerve sensorium " in society. To do so is to nullify what merits the organic analogy possesses; for though there is no actual physical body which we can point to and call the " state " or " society ", yet the state is a very real entity. The individuals in a state, we may say, are organically bound together by common purposes and ideals. Or (2), it may mean that the individual is so bound to the state that he is, as the ancient Greek citizen was, a purely state-individual. All his activities are centred in and conditioned by the state. These two extremes of the theory point to its danger. Dr. Leacock's chief objection to the theory rises from this. "Too great an amalgamation of the individual and the state," he says, in his *Elements of Politics,* " is as dangerous an ideal as too great emancipation of the individual will." The organic analogy emphasises unity, indeed, but too often at the expense of diversity or variation.

No Criterion of Conduct.—Dr. Leacock also points out that it furnishes no criterion of conduct. "The organic theory telling us that our institutions grow and are not made hardly offers a practical guide to political conduct." It might lead to an inactive fatalism ; but certainly to no sound theory of a political ideal realised by conscious, hard effort.

Further Analysis.—Further, the analogy, when carefully analysed, proves to be only partial. One of the chief points in the analogy is the interrelation of whole and parts. This is true of the state and of organisms; but it is true of inorganic objects as well. The parts of a state have a relation to the whole and the whole in idea is prior to the parts. Bluntschli says : "An oil painting is something more than a mere aggregation of drops of oil and colour ; a statue is something other than a combination of marble particles; man is not a mere quantity of cells and blood corpuscles : so too the nation is not a mere sum of citizens and the state not a mere collection of external regulations." Bluntschli's own comparison applies to the inorganic. The notion of continued growth is as true of an inorganic fire as of an organic animal. Why, then, it may be asked, should these qualities of growth, etc., be called *organic* if they are also characteristic of inorganic objects ?

Some scientists and philosophers (such as Kant) regard the organism as implying a certain end, which is the condition of its present state of development. The state is also said by Aristotle to be an end, and to be prior to the individual, but modern science, while it may grant that the organism fulfils a certain end, does not regard that end as prior in intention to its fulfilment. The organism is adapted to its environment and fulfils certain functions in relation to that environment, but its adaptation is due to natural causes, not to preconceived ideas. Not only so, but these analogies of end and purpose apply to human intelligences, and therefore are taken from human society and applied to the organism. To reflect an idea from society to the organism, and then try to explain society by the analogy does not help us.

Conclusion.—To sum up, the organic analogy is useful in bringing into prominence the fact that the state is not a mechanical unity. It brings out the essential unity of the state, the differentiation of functions in government and the

mutual interrelation of citizens. Applied beyond these simple comparisons, it is illogical and misleading. Though the analogy seems clear at first, a closer analysis makes its usefulness less obvious. Some of the most applicable points of likeness to the state in the organism are those either which biological science does not admit or which are ultimately taken from society itself. Common purpose, acting on human minds, keeps society together. To explain the action of mind by an analogy with the non-intelligent, to explain moral action by what is non-moral, beyond the general limits indicated, only leads to confusion.

CHAPTER III

THE ORIGIN OF THE STATE

1. GENERAL REMARKS

Types of Enquiry.—An investigation of the origin of the state gives us two distinct lines of study—one historical, the other speculative. How this or that state came into existence is a matter for history. History tells us the various ways in which governments come into being or perish; but it does not tell us how mankind originally came to live under state conditions. Did history extend back to the beginning of society, our enquiry would be mainly historical. Of the circumstances surrounding the dawn of political consciousness we know little or nothing from history. Where history fails us, we must resort to speculation. Many theories each of which has something to commend it, have been advanced to explain the origin of the state. At the present time the evolutionary or historical theory finds almost universal support: but finality of judgment is difficult. In the last few years much has been done by the sciences of Anthropology, Ethnology and Comparative Philology towards the elucidation of the question, and, as these sciences are only in their infancy, great discoveries may await them in respect to this particular problem.

The sacred veil which Burke says is drawn over the earliest types of government has not been lifted by history.

Long before historical documents existed, tribal and national characteristics had been formed, and even the first stage of political society—the relation of command and obedience—had passed. Aristotle thinks that the Cyclopes illustrate the earliest type of actual political society. A description of the Cyclopes is given in the *Odyssey*. The Cyclopes had no assemblies and no laws. Each man made laws for his wives and children, and, says Aristotle, they lived "dispersedly" (i.e., with no fixed abode or institutions) "as was the manner in the earliest times." This Cyclopean existence is somewhat similar to the hypothetical "state of nature" which has appealed to so many thinkers. Unfortunately it does not explain to us the origin of political society: it does not show how political consciousness first evolved and took actual form. The Cyclopean society is a form of organisation: it does not explain its own origin. It marks a stage in political development.

An enquiry into the origin of the state leads us to some of the fundamental problems of Political Science, or, particularly, of Political Philosophy, for which history gives us only certain material for induction. Anthropology, which collects, arranges, and explains the many facts concerning social institutions, is even more helpful in this respect than history.

2. HISTORICAL FORMATIONS

Bluntschli's Classification.—The best classification of historical formations from the point of view of their origin is that of Bluntschli. He gives three main classes of historical forms :—

I. The original formation of the state, when it takes its beginning among a people without being derived from already existing states.

II. The secondary forms, when the state is produced from within, out of the people, but yet in dependence upon already existing states, which either unite themselves into one or divide themselves into several.

III. The derived formation of the state, which receives its impulse and direction not from within but from without.

It is necessary to remind the student in this connection that a change in the form of government in a state is not a

change of the state. Where, for example, a monarchical system is replaced by a republican, the state continues though the form of government is changed.

These main classes are subdivided by Bluntschli in the following way :—

I. ORIGINAL

1. *Creation of an absolutely new state.*—This takes place when a number of people, coming together on a definite territory, gather round a leader or leaders (often religious) who forthwith establish statutes for the approval of the people. The creative act of the leader or king and the political will of the people form the law of the state. The state is the work of the conscious national will. An example of this process exists in the legendary origin of Rome where, according to the story, the people, coming together in the city of Rome, consciously created a state. The historical authenticity of this is doubtful.

2. *Political organisation of the inhabitants of a definite territory, where the people though gathered together on a definite territory, may not yet have organised themselves into a political society.*—The organisation of the people in this case leads to a state. An example is Athens, where, according to the legend, the hitherto unorganised people were organised by Theseus, who concentrated the government in Athens. Bluntschli cites also the example of California in the United States of America. In California, in the first half of last century, attracted by the gold mines, a big population of all sorts of people gathered together. In 1849 they elected representatives to a constituent assembly which drew up a constitution for the state. The common will of the whole population, not the will of particular individuals, established the state.

3. *Occupation of territory by an already existing nation.*—In this case a nation already in existence occupies land necessary to its continued existence. The most frequent form this takes is conquest, examples of which abound in history. Another form of occupation is the peaceful settlement of a territory, as in the case of the Pilgrim Fathers. In similar cases it is usually superiority of civilisation, not force of arms, that conquers.

II. SECONDARY FORMATIONS

(1) *Formation of a Composite State by a League between States.* (2) *Union.* (3) *Division.*

(1) Of the Composite state Bluntschli gives three types—

(*a*) Confederation, where several hitherto independent states unite for certain purposes, but do not make a new state. In a confederation the units are free to withdraw if they wish. The management of common affairs is given either to one member of the union or to an assembly of delegates.

(*b*) Federation, where hitherto independent states unite in making a new state. In a federal union the "states" are not states properly so-called, as they do not possess sovereignty. Federation is the most complete type of union.

(*c*) Bluntschli gives federal empire as a third class, the example of which is Germany (before the Great War). Both confederations and federations are best fitted for republics, he says, and as Germany differed from them in having a monarchy with kings at the head of states, and in the predominance of Prussia, he puts the German Empire in a distinct class.

(2) *Union.*—Two or more states may be united under one ruler, or a single new state may be formed. The lowest and most imperfect union of this kind is (*a*) *Personal Union* where two hitherto separate states may come under one dynasty by succession. The succession may later fall to two different persons—the union never being very real.

(*b*) *Real Union.*—In this case the supreme government in legislation and administration is one for the constituent elements of the union.

(*c*) *Complete Union.*—The highest type of union is where a composite and single state is formed.

(3) *Division.*—(*a*) *National Division,* where previously there was a bond but where the bond has decayed, e.g., in the empires of Alexander, Charlemagne and Napoleon.

(*b*) *Division by Inheritance.*—This took place frequently in the Middle Ages when the feudal idea prevailed that the king was owner of the land and could do with it as he liked.

(*c*) *Declaration of Independence,* as in the case of the United Provinces of the Netherlands against Spain in 1579, and the United States of America in 1776.

III. DERIVED FORMATIONS

1. *Colonisation.*—(*a*) Greek, where the people went from the mother state and consciously formed a new state independent of the mother state, but preserved the same manners, government, and religion.

(*b*) Roman, in which the colonies were in strict dependence on Rome. They were really extensions of the existing state.

(*c*) Modern, of various types.

2. *Concession of sovereign rights,* which is an extension of the colonial idea, as in Canada, Australia, South Africa, and the Philippine Islands.

3. *Institution by a foreign ruler,* as when conquerors, like Napoleon, set up states.

We shall have to return to a more detailed analysis of several of the types of historical formations given by Bluntschli. These historical types do not give us the origin of the state as such, as distinct from the origin of any given state. To discover the origin of the state as such, we have to resort largely to speculation. The historical ladder of development is defective, but by using the material, often shadowy and usually very debatable, which sociology, history and anthropology give us, we can, with a fair measure of certainty, build up a reasonable theory of the origin of the state. This theory is generally known as the Historical or Evolutionary Theory of the origin of the state.

3. SPECULATIVE THEORIES. THE SOCIAL CONTRACT THEORY

Before stating the Historical Theory we must first examine certain theories which, though now rejected, have had great influence on political development as well as on political thought. These theories are three in number—

1. The Social Contract Theory.
2. The Theory of Divine Origin.
3. The Theory of Force.

Value of Speculative Theories.—Though these theories are now practically universally rejected, a study of them is valuable for more than one reason. In the first place, these theories represent an attempt to solve the fundamental questions of both how and why the state came into existence,

and each contains some important truth. In the second place, each of these theories has had considerable influence on actual political practice. Many of our modern political institutions can be properly understood only when examined in relation to the political ideas current at the time of their inception. Political theory and practice are closely related. Sometimes political ideas definitely lead to changes in old institutions or the creation of new ones. The theorist comes first in this case, while the practical reformer carries out what is theoretically desirable. Sometimes the opposite course is followed. Political changes happen, especially sudden political changes, with no reasoned basis. Actual events in this case are followed by theory.

The Social Contract Theory.—The Social Contract theory has played such an important part in modern political theory and practice that it demands treatment at considerable length. In the theory there are two fundamental assumptions—first, a state of nature, second, a contract. The contract, again, may mean either (*a*) the social or political contract, which is the origin of civil society, or (*b*) a government contract, or agreement between rulers and subjects.

The State of Nature.—The state of nature is supposed to be a pre-political condition of mankind in which there was no civil law. The only regulating power was a vague spirit of law called natural law. There was no law of human imposition in the state of nature. The views of writers vary greatly as to the condition of man in such a state. Most writers picture it a state of wild savagery, in which the guiding principle was "might is right." Others think of it as a state of insecurity, though not of savagery; some consider it to have been a life of ideal innocence and bliss.

The Social Contract.—The contract is interpreted in various ways, according to the theory which the individual writers wish to establish. Some writers regard the contract as the actual historical origin of civil society; others look upon it as a governmental contract, made between rulers and ruled. Some regard it as historical, others take it only as a basis or emblem of the relations which should exist between government and governed. The main idea of the contract as the origin of civil society is a surrender by individuals of a certain part of their "natural" rights in order to secure the greater benefits of civil society. Man, consciously and

voluntarily, made a contract, whereby the free play of individual wills was given up to secure the advantages of social co-operation. For the surrender of his natural rights each man received the protection of the community.

4. HISTORY OF THE SOCIAL CONTRACT THEORY

In Greek Philosophy.—The Contract theory is first found in the Sophists, a school of Greek philosophers who lived before Plato. In the philosophy of the Sophists a sharp distinction is made between nature and convention. This distinction they applied to society. The fundamental principle of human life, the Sophists said, is self-assertion. Man's nature is such that, if he is not hindered by social institutions, he will seek his own interests. His true nature, however, cannot be fulfilled because of conventions, that is, social institutions. These social institutions curb the natural play of human activity, and, as such, are wrong. The state is a barrier to self-realisation, and, therefore opposed to nature. It is a result of contract, or a voluntary agreement between men.

Plato and Aristotle.—Both Plato and Aristotle mention the theory only to repudiate it. In the *Republic* Plato represents one of his philosophers, Glaucon, as attributing the true origin of political society to a contract. Each man, he says, tries to get as much as he can for himself, but to escape such individual self-seeking and its consequences men formed a contract, which, according to Glaucon, is the criterion of law and justice. In another book, the *Crito,* Plato gives the arguments used by Socrates against those who tried to effect his escape from prison. Socrates says that, as he is an Athenian citizen, he has made an agreement to obey the laws of Athens even though he considers them unjust.

Neither Plato nor Aristotle has any sympathy with such views. They are, they hold, essentially unsound, and after two thousand years, during part of which the Contract theory ruled supreme, the modern world has reverted to their position.

The Epicureans.—The Epicurean philosophers, though in theory they professed to have no dealings with the state, offered the Contract theory as an explanation of justice, not as the origin of the state. Epicurus held that right is only a compact of utility which men make not to hurt each other

in order that they be not hurt. There is no such thing as justice in itself. It exists only as the result of mutual contracts. There is no justice where, as in the case of animals, there is no contract; nor, therefore, is there justice where men either cannot, or are unwilling to make contracts.

The Church Fathers.—Except for occasional appearances, as in the works of the Latin poet Lucretius, the Social Contract theory was not revived for many centuries in the west. In the east the theory in an undeveloped form appeared in Hindu Sanskrit literature, in books such as the Mahabharata (especially Book xii, Santiparvam). It is not clear that, in the west, the later and earlier theories are connected by more than chance. After the foundation of the Christian church political thought was dominated for centuries by religion. The early Christian fathers held that government is the result of sin, and, therefore, an evil. God imposed civil society on mankind because of man's fall. Such a theory gives no room for the exercise of man's will which is necessary to a contract. There were, however, influences at work during the early centuries of the Christian era to bring the idea of contract to its fruition. One of these influences was in the church itself. The Bible, which was the criterion of truth to the church fathers, contained several instances of such covenants or contracts between the Lord and the people or between the king and the people. Thus in the Old Testament (2 Samuel v. 3) we read—"So all the elders of Israel came to the King in Hebron: and King David made a covenant with them in Hebron before the Lord: and they anointed David King over Israel." This and several other instances in the Bible gave the necessary support to the ecclesiastical writers who wished to give a contract theory. The theory had little vogue as a political instrument, but it bore much fruit in the many ecclesiastical councils of the Middle Ages.

Roman Law.—The chief influence in keeping alive the contract notion was Roman law. According to Roman law the people was the source of political authority, and the predominance of the conception of contract in Roman law was also not without its effect in this matter. The Roman emperor held authority from the people. "The will of the emperor is law," said Ulpian, one of the greatest Roman jurists, "only because the people confers supreme power upon

him." This idea was not only universal among the Roman jurists but latent in the thought of the time. From Cicero onwards the idea constantly recurs, not only as an idea in philosophical speculation but as an inherent element in the constitutional practice of the Roman Empire. In Cicero's work "On the Commonwealth" we find the view that the state is the natural order of life, founded on justice, with the aim of securing the common well-being. A state is no state, he says, where all are oppressed by one or a few, where there is no common bond of law, no real agreement or union. Cicero looked on political liberty as identical with a share in political power. Common consent, common will, common power run through his thought, implying, indeed almost directly stating the idea of contract.

Though the Roman lawyers did not adopt the idea of liberty as meaning a share in authority, they certainly regarded the people as the source of authority. The social contract as a definitely stated theory did not appear till the eleventh century, but Roman legal ideas contained an undeveloped form of the theory. Consent is common to both the theory of contract and to Roman law, and, if Roman law does not directly express the theory, it certainly furnishes one of the chief foundations on which it was built.

The Teutons.—Another important influence in the development of the theory was the Teutonic idea of government. The Teutonic theory went further than the Roman. Not only did the king require the theoretical consent of the community for his election, but in actual practice he was under the law. In the Roman theory the authority of the ruler was derived from the people: in the Teutonic it was both derived from and continued under the people. At the time of their election the Teutonic kings practically made an agreement with the people, the chief article of which was the guarantee of good government. There are many examples of kings renewing their promises in cases where they thought the confidence of the people had been shaken.

Feudalism.—Still another influence is to be found in feudalism. The feudal system was largely personal, yet there was a certain basis of contract between the lord and his vassals. The two principles of feudalism, loyalty to the person of a superior, and contract, seem mutually exclusive, but in reality they were not so either in theory or in practice.

There was a mutual obligation in the feudal system. Each side had duties. The vassal performed certain duties on the understanding that the overlord performed others. Further, in the feudal system the ruler was the owner, but gradually the notions of rulership and ownership were separated. Ownership was regarded as a contractual relationship between owner and tenant, and rulership came to be looked on as a contract between people and ruler.

Though the theory of the early Christian fathers, that civil society was the result of the fall, held the field for a long time, gradually it gave way to the idea that the state was the creation of the will of the community. Influenced both by Roman law and Teutonic ideas, the church leaders took up the position that God was a "remote" cause of civil society, the "immediate" cause being either the will of an individual ruler or of a community. The chief current of opinion was in favour of the act of will on the part of the community, an act which was compared to the self-constitution of a corporation, although a corporation was only a subordinate body in the state.

The State of Nature.—The church fathers had never disputed the state of nature—in fact it was an accepted part of their creed. Thus one of the constituent elements of the Social Contract theory was already generally current. Natural law, as we shall see, was also an accepted fact. The Roman and Teutonic ideas were easily fitted to the notion of contract or consent; and it was left to the various theorists to draw what conclusions they wished from such premises.

Manegold.—The first definite statement of the contract was given in the eleventh century by an ecclesiastic, Manegold of Lautenbach. Manegold regards the office of the king as sacred. It is above all earthly offices; the holder therefore must be above all others in justice, goodness and wisdom. Though God is the ultimate origin of the kingly office, the immediate origin is the community. The people set the king over them to secure them against tyranny and wickedness. If the king, who is elected for such security, turns against the people by acting tyrannically himself, the people are freed from his rule, because he has broken the pact or contract on which he was elected. The people may swear allegiance, but their oath is conditional on the king observing his oath to administer justice and maintain the

law. These oaths are reciprocal : they constitute a contract, the breaking of which by one party leads automatically to the freedom of the other from its terms.

Manegold's theory is not an explanation of the origin of the state; it is an interpretation of current constitutional ideas. The Social Contract theory has always been used with some reference to constitutional theory or actual political events. Its use as an explanation of the origin of political society is often secondary. Just as Manegold formulated the theory to explain the current position of ruler and ruled, Hobbes, Locke and Rousseau, several centuries later, used it to justify absolutism, constitutional government, and popular sovereignty respectively.

Subsequent History.—From the eleventh century onwards the theory became more and more accepted, till in the sixteenth and seventeenth centuries it was universally held. The aims of those who supported the theory varied. Some used it to support absolutism, some to support the liberty of the people. Only a few give it as an explanation of the origin of civil society. Among the many exponents of the theory we may mention Languet, the supposed author of the *Vindiciae Contra Tyrannos,* or the *Grounds and Rights against Tyrants,* 1579, one of the earliest of the modern systematic treatises accepting the contract theory ; George Buchanan, the Scottish reformer, whose book *On the Sovereign Power among the Scots* was also published in 1579 ; Althusius, the German jurist, whose *Systematic Politics* (1610) gives a wonderfully modern position, showing a clear appreciation of the distinction between state and government ; Mariana, a Spanish Jesuit, whose anti-monarchic doctrines in *On Kingship and the Education of a King* (1599) are surprising, considering his environment—he was a Catholic in the most absolutist country in Europe, Spain ; Suarez, also a Spanish Jesuit, who, in his *Treatise on Law and God the Legislator* (1613), starts by giving a theory of popular sovereignty akin to that of Rousseau, but proceeds to argue that the people in virtue of this sovereignty give supreme power to the king ; Grotius, the Dutch jurist, founder of our modern International Law, who, in his *Law of War and Peace* (1625), followed the absolutist theory of Suarez ; Pufendorf, the German philosopher, whose work *On the Law of Nature and of Nations,* is an attempt to reconcile the doctrines of Grotius and Hobbes ;

Spinoza, the philosopher, who argued for individual liberty on practically the same grounds as Hobbes did for absolutism, in his *Theologico-Political Treatise* (1677). Among English writers accepting the theory may be mentioned Hooker the author of the *Laws of Ecclesiastical Polity* (1594), who gives the first definite statement of the theory in English. Hooker, a clergyman, set out to defend the church as established in England, and in its defence he made an analysis of authority in general. He concludes that authority depends on consent. His arguments are founded on the state of nature and the social contract. The poet Milton in his *Tenure of Kings and Magistrates* (1644) tries to show that ultimately political power rests with the people. Filmer, an English seventeenth century royalist, whose antagonism to the contract theory led to John Locke's *Treatises*, and Hume, the philosopher, whose essay *Of the Original Contract* is one of the most telling attacks on the contract theory, are both opponents of the theory. The views of three writers on this subject demand special attention—Thomas Hobbes (1588-1679), John Locke (1632-1704), both Englishmen, and Jean Jaques Rousseau (1712-1778), the French writer.

Hobbes.—Hobbes's theory is expounded in his *Leviathan*, published in 1651. Hobbes lived in the stirring times of the Great Rebellion and the Commonwealth. He was much affected by the miseries caused in England by the Civil War, and concluded that the salvation of the country lay in an absolute system of government. Adopting the current theory of contract, he started from a state of nature in which man was subject to only one law—the natural law of self-preservation. The state of nature was a state of savagery, where every man was either trying to kill, or in danger of being killed by, his neighbour. Man's life was, as he says, "solitary, poor, nasty, brutish, and short." The law of self-preservation meant the rule of brute strength or of cunning. The same law impelled man to seek a way out of such a wretched condition. This he found in a covenant of each with all, whereby a state was established. Hobbes's own words best explain the process. The state is established by a covenant of every man with every man in such a manner as if every man should say to every man : "I authorise and give up my right of governing myself to this man, or to this assembly

of men, on this condition, that thou give up thy right to him, and authorise all his actions in like manner."

In this way people resigned their natural rights to a person or body of persons, which person or body became the sovereign in the community. This sovereign was not a party to the contract, but a result of it. He (or they) derived from it absolute authority, which could not be revoked, for the individuals had left no rights to themselves. The people, says Hobbes, have no right to rise against the sovereign. The sovereign therefore possesses unlimited power, and, however arbitrarily that power is exercised, the people must obey.

Criticism of Hobbes's Theory.—In his desire to support absolutism Hobbes entirely fails to recognise what we now call political sovereignty. He gives a theory of legal sovereignty which, so far, is perfectly correct, but he does not recognise that the will of the state is not the will of an individual ruler. Instead of being completely independent of the people, the ruler is, properly regarded, the agent of the people. The people may indeed give him a legal status, but that legal status does not empower a ruler to oppress the people irrespective of all moral rights. As Locke pointed out afterwards, civil society exists for the common good, and, if that purpose is defeated by a ruler, the society may change the ruler. Changing a ruler does not mean the abolition of civil society. The state is more than government and the state-will more than the will of an individual. Hobbes does not recognise the difference between state and government; in fact, as we have already seen, he so far confuses them as to say that the state is dissolved with the death of a ruler.

Locke.—The theory of John Locke is given in his *Two Treatises of Civil Government*, published in 1690, two years after the English Revolution. It is important to note the historical background of both Hobbes's and Locke's theories. Hobbes, impressed by the miseries of the Great Rebellion, argued on the basis of the social contract for a system of absolute monarchy. Locke, on the same basis, tried to justify the deposition of James II. and the establishment of constitutional government. Locke starts with the idea of a state of nature which, he considers, was a state of equality and freedom. In the state of nature men were subject to the law of nature, which constituted certain rights over life and pro-

perty. The state of nature was not, as Hobbes held, a state of war and misery. It was a state of insecurity, because, although rights did exist, there was no impartial or final arbiter to protect the individual in the enjoyment of his rights. For this reason, men agreed to resign to a ruling authority just so much of their rights as was necessary to secure their ends. The state was thus created to protect certain rights already in existence. The individual surrendered certain rights to secure his remaining rights and liberties. These individuals could not invest their rulers with unlimited rights over life and property, for they had not possessed such rights themselves. And, as Locke says, it is not reasonable to suppose that the individuals would resign more of their rights than was actually necessary to secure the benefits of civil society. The sovereign, therefore, could not, as Hobbes said, be unlimited. The sovereign could claim only limited authority. If he betrayed his trust, he could lawfully be deposed. The people in such a case could resume their original liberty and establish a new form of government.

Criticism of Locke's Theory.—Locke's theory is a theoretical justification of constitutional government. (He represents a great advance in political thought. By showing that the sovereign (or ruler) is not independent of the people in all his actions) he gives us the fundamentally important distinction of state and government. Hobbes, as we have seen, identified the one with the other. Where Locke errs is in his failure to recognise that the ruler may quite legally oppress a people. Hobbes declared that the sovereign could not act illegally, and so far as the sovereign occupies a legal position which says he cannot act illegally, this is quite correct. A people may be oppressed by the sovereign legally enough, if the law permits the sovereign to oppress them; and their right to depose the sovereign does not arise from the sovereign's legal position. They may, however, have *moral* right to depose him. What Hobbes does not recognise, and what Locke does recognise, is that there is a power behind the throne, (that the exercise of sovereignty depends ultimately on the will of the people to obey.) The sovereignty of the state is not the sovereignty of a ruler. The will of the state may limit the will and actions of a ruler. Thus Hobbes confused the state and king, but Locke did not recognise

the full bearings of legal sovereignty. To use our modern terminology, (Hobbes gives a theory of legal sovereignty without recognising the existence and power of political sovereignty; Locke recognises the force of political sovereignty but does not give adequate recognition to legal sovereignty.)

Rousseau.—The theory of Rousseau is contained in his *Social Contract* published in 1762. Rousseau tries to combine the theories of Hobbes and Locke. He sets out to harmonise the absolute authority of the sovereign with the absolute freedom of the citizen. His purpose, as he said himself, was "to find a form of association which may defend and protect, with the whole force of the community, the person and property of each associate or citizen and, by means of which, each uniting with all, may nevertheless obey only himself and remain as free as before." The starting point in his theory is a state of nature, which he says was idyllic. It was the happiest period of human life. Each one, unsophisticated and free from social laws and institutions, was able to seek and secure his own happiness. The state of nature was ideal, and the nearer we are to that state the better for us. With the growth of population, however, man was forced into civil society. He had to give up his natural freedom. "Man is born free," he says in a historic passage, "but is everywhere in chains." Civil freedom was substituted for natural freedom by a social contract. This contract is made by the individuals of the community in such a way that every individual "gives in common his person and all his power under the supreme direction of the general will and receives again each member as indivisible part of the whole." The individual gives himself up to the control of all but not to a particular person. The community, not the ruler, as Hobbes held, receives the sovereignty. The sovereignty of the community is inalienable and indivisible. The "prince," that is government, is only a subordinate authority, or servant. The ruling power or government is only a commission: it exercises its power in virtue of the sovereignty of the people, and the people can limit, modify or take it away as it wishes. The government wields the executive power but the legislative power remains with the people. When the people assemble together, they resume full power and the "prince" is suspended from his functions.

Criticism of Rousseau's Theory.—In this way Rousseau tries to reconcile the absolute authority of the whole with the absolute freedom of the parts. Thus, if an individual suffers the death penalty for his misdeeds, he is really a consenting party to his own execution, for he is part of the sovereignty which made the law which condemned him. The central idea in Rousseau's theory is the doctrine of the general will, a doctrine which, more than any other single doctrine, has moulded modern political thought. "The legislative power always belongs to the people; only that law is a real law which is in accordance with the general will. This general will (which is to be distinguished from the will of all, or individual wills) can be expressed only in a mass meeting of the people. A representative assembly cannot adequately voice it. Representative assemblies once elected become the masters, not, as they should be, the servants of the people. The true sovereign is the totality of the people. "As nature gives a man absolute power over his members," he says, "the social contract gives to the body politic absolute power over its members; and it is this same power, which, directed by the general will, bears the name of sovereignty."

The obvious difficulty of this is that only unanimity, which in practice is impossible to secure, could make a law valid. Rousseau, however, says that the general will is not necessarily the unanimous will of the citizens. Absolute unanimity is necessary only for the original contract. After the state is established, consent is implied in the fact of residence. "To dwell in a territory," he says, "is to submit to its government." Within the state a majority is sufficient to make a law valid. The general will (which, he says, always wills the common good) is the criterion.

Just as Hobbes's theory supports absolutism and Locke upholds constitutional government, Rousseau's theory supports popular sovereignty. Rousseau's chief merit lies in making clear the distinction between the state and government, but he goes to extremes in making the state-will equivalent to popular demands. The general will, which always wills the public good, is not, as he makes it, equivalent to the decision of the majority of the people. In his desire to establish a sound enough theory, he goes so far that he completely destroys the stability of government. Government, in his view, excludes the legislative function. It is purely

executive; it simply carries out orders. It cannot make laws, *i.e.*, express the will of the state, and it is liable to instant dissolution when the people assemble in a sovereign body. But government includes the legislative as well as the executive.

Like Hobbes, Rousseau advocates absolute, inalienable sovereignty. Hobbes says it belongs to the ruler; Rousseau to the people. Like Locke, Rousseau recognises the distinction between the ruler and the power behind the ruler, or between legal and political sovereignty. Locke, however, regards as legal all acts made by the government except those which violate the rights of the individual. The people reserve certain powers for use in cases of necessity. In Rousseau's theory all laws depend on the general will, which can be expressed only in a general assembly of the people. The people are continually sovereign; they do not exercise sovereignty in cases of emergency only.

After Rousseau.—The Social Contract theory reached its high-water mark in Rousseau. The historical commentary on his theory is found in the French Revolution, which was a practical application of an extreme theory of the sovereignty of the people. After Rousseau the theory gradually died out. The theory, as one writer puts it, "faded away in the dim light of German metaphysics."

Kant.—Kant and Fichte, the German philosophers, each gave a distinctive setting to the theory. Kant regards it not as an historical fact but as an "idea of reason." The contract, he says, may be looked on as "the coalition of all the private and particular wills of a people into one common and public will, having a purely juridical legislation as its end." It is unnecessary, he says, to presuppose the contract as an historical fact. It has, however, practical reality, for "it ought to bind every legislator by the condition that he shall enact such laws as might have arisen from the united will of a whole people, and it will likewise be binding upon every subject in so far as he will be a citizen so that he shall regard the law as if he had consented to it of his own will." The contract is thus the criterion of the justness of law. If it is impossible that the whole people could have consented, then the law is unjust. A law, for example, establishing certain birth-privileges would be unjust according to this standard of judgment.

Fichte.—Fichte, Kant's disciple, just as in many respects Kant was Rousseau's disciple, carries the theory to its utmost limits. Fichte (though his opinions did not remain uniform throughout his life) says that, as man is subject to the moral law alone, he can terminate the contract at will. Every man, therefore, can take himself away from the civil society of which he is a party by the original contract. The same right applies to any party of men. Fichte allows the most extreme form of secession, for, he says, what belongs to a smaller number of men logically belongs to a greater number. The right of secession of course passes into the right of revolution. Fichte later changed his views from this extreme individualism.

In America.—It is natural that the idea of consent in the Social Contract theory should have appealed to the makers of the American constitution. The War of Independence had been fought on that ground, and, not unnaturally, the Social Contract appears in the preamble to the Declaration of Independence. The ideas of Rousseau in particular appealed to the Americans, and these are traceable in almost every American constitution drawn up at that time. In the constitution of New Hampshire it is stated that "all men are born equally free and independent. Therefore all government of right originates from the people, is founded in consent, and instituted for the general good." In the often-quoted constitution of Massachusetts the contract is definitely accepted. "The body politic," it says, "is formed by a voluntary association of individuals. It is a social compact, by which the whole people covenants with each citizen and each citizen with the whole people, that all shall be governed by certain laws for the general good."

The contract idea is also voiced by the early American writers—such as Jefferson and Madison, but there is nothing particularly noteworthy in their presentation of the theory.

Decay of the Theory.—In the nineteenth century the theory gradually died. The causes of its death were—

1. The rise of the historical spirit in Political Science, marking a change in the mental attitude of the time from speculative to positive. Montesquieu, the French writer, was the leader of this school. His *Spirit of the Laws*, published in 1748, is one of the most epoch-making books in the history of Political Science, though it failed to have immediate

effect on his contemporaries. Montesquieu, in sharp contrast to the writers of his time, who started from nature to prove their theories, adopted history and observation, with generalisations drawn therefrom, as his method. Burke, in England, used this method with great effect against Rousseau.

2. Darwin and theory of evolution. This theory, applied first to the plant and animal, gradually suffused all departments of thought and enquiry. At the present moment it is supreme, and Political Science, like every other science, is interpreted in the light of evolution.

3. The replacement of the sound elements in the theory by new theories, e.g., the doctrine of political sovereignty, and the recognition of the distinction between state and government on which the doctrine of political sovereignty rests.

4. The general unsoundness of the theory itself.

5. CRITICISM OF THE SOCIAL CONTRACT THEORY

Uses of the Theory.—The above sketch of the history of the Social Contract theory will enable the student to appreciate the main points of criticism to which it is open. Two things must be remembered : first, that the social contract is sometimes regarded as an actual historical fact, to which the origin of the state is ascribed ; second, that it is often used only as an idea either to interpret current constitutional usage or to express certain fundamental relations existing in political life. In the first of these lies the chief weakness of the theory, in the second its chief strength.

1. **Criticism : It is False.**—As an historical explanation of the origin of society it is false. Nothing in the whole range of history shows a stage of historical development such as the theory assumes. History gives no example of a group of primitive people, without any previous political knowledge or development, meeting together and consciously forming an agreement like the social contract. Not only so, but to assume that individuals either could or would do any such thing presupposes either a knowledge of political institutions learnt from somewhere else, or a fairly highly developed social consciousness inconsistent with the ignorance and simplicity which are usually associated with the state of nature. Some writers, indeed, suggest what seem to them actual instances of contracts. The most notable is that drawn up by the English emigrants to America in 1620. "We do," it says,

"solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil body politic for our better ordering and preservation." Another example is the State of California, already quoted in Bluntschli's classification of historical origins. Several of the American state constitutions are of a similar type. These, however, do not give the origin of the state as such, but the origin of particular states. The contracting parties were already familiar with government; what they did was to institute among themselves what they were familiar with under different conditions.

Not only is there no historical evidence of a social contract as the origin of the state, but what evidence there is shows that a contract of any kind was unlikely. Research has shown that early law was more communal than individual. In early times law existed not for individuals but for families. Sir Henry Maine in particular points this out. Early laws, he says, "are binding not on individuals but on families. . . . . The movement of progressive societies has been uniform in one respect. Through all its course it has been distinguished by the gradual dissolution of family dependency, and the growth of individual obligation in its place. The individual has been steadily substituted for the family as the unit of which civil laws take account. . . . The movement has been from one of *status* to one of *contract*." Though history does not give us an absolute solution, we may reasonably argue by analogy that in the period preceding that of which Maine speaks, there was still less individualism. The social contract theory, however, speaks of individuals making contracts for *individual* safety and the security of property for *individuals*.

2. **Natural law: its Meaning.**—The whole conception of the state of nature and natural law is wrong. The social contract is a mechanical, artificial explanation of the origin of civil society. The state is in the proper sense of the word as "natural" as was the supposed "natural" law. (Natural Law is a subject which requires fuller treatment, and it receives such in the chapter on Law.) The distinction between nature and convention, which is so prominent in the Sophistic philosophy, and underlies the whole theory of contract, is false. Man is part of nature and his impulses and actions are as natural as is his life itself. Far from being artificial,

the state is the very expression of man's nature. The state depends on the society of man who by nature is social, or, as Aristotle said, is a political (or, rather, social) animal. No better refutation of the social contract from this point of view has ever been given than by Plato and Aristotle.

Plato.—Plato (in the *Republic,* Books I and II) refutes both the contract and force theories in the same ways. Two of the characters of the *Republic,* Thrasymachus and Glaucon, contend respectively that force and the social contract are the bases of civil society. Both, says Plato, are wrong. The state is a growth, not a manufacture. Its origin is natural, based on the need that man has for his fellow members of society. This mutual need, at its lowest an economic need, exists from the beginning of man's existence and is part of his human nature. Men do not make a bargain consciously : the agreement exists because of their nature. No man is self-sufficient : of necessity he depends on his fellow-men. This does not mean that civil society is merely utilitarian. Justice does not exist for self-interest; it is the expression of the true nature of man. It is the inner relation which makes civil society a true unity.

The arguments of the *Republic* are brought out more clearly in the *Protagoras* where Plato illustrates his meaning by a myth. Men in their earliest state lived in a scattered condition. Gradually they gathered together in towns, but the mere fact of congregation did not improve them, as they had no form of government. Zeus then sent his messenger, Hermes, to distribute justice and reverence, the two bonds of civil society, among them. Zeus ordered Hermes to distribute these not to a few, as the arts were distributed, but to every man.

Aristotle.—Aristotle, like his master Plato, combated the idea that the state was mechanical or artificial. The state, he says, is a type of life, necessary for life. Nature, he says, always seeks some end, and the end is the good life. This good life is the *final* cause of the state, man's need being the *efficient* cause. The state arises from the needs of life and continues to exist for the sake of good life. Nature therefore intended man to live in a state from the very beginning, and for this reason man was given the power of speech. The true nature of a thing is its full development. The state is the final point of development in a series stretching from

the household, joint family and village community. Just as the household or family is natural so is the state.

The positions taken up by Plato and Aristotle are substantially those adopted to-day, though we make a distinction, not given by them, between the state and society. The Sophistic contrast between nature and convention which troubled Plato and Aristotle has lost its point in the modern world. We no longer contrast the two, although we often contrast nature with society as a whole.

3. **It is Illogical.**—On an appreciation of the nature-convention fallacy depends the understanding of another point of criticism, that the theory is illogical. Liberty cannot exist in the state of nature. Liberty implies rights, and rights arise not from physical force but from the common consciousness of common well-being. Rights imply duties: the two terms are correlative. If I consider I have a right to do such and such, I must concede the same right to others, and why both my neighbour and I agree in this is that we are both conscious that it is necessary for the common welfare. In the state of nature the only right is force: there is no such thing as duty, except the duty of self-preservation. The physical or brute force of the state of nature is not a bond of society: it is only a personal weapon. It creates no rights and therefore gives no liberty. Law is the condition of liberty. The so-called liberty of the state of nature is really licence.

4. **It is Impossible.**—It has been pointed out, too, that the conditions of a contract presuppose a system of law to support it. There must, therefore, be the will of a community behind a contract, which at once ascribes the origin of the state to something behind the contract, i.e., common will.

5. **It is Dangerous.**—Bluntschli and others point out that the contract theory is dangerous, and, as evidence, quote the intimate connection of the French Revolution with Rousseau. The theory certainly has been used to establish positions dangerous to the stability of the state. To the superficial observer it might appear that the state and government are due to individual caprice, while several upholders of the theory actually encourage revolution.

Its Value.—Though these weaknesses exist in the theory, due credit must be given to it for one fundamental truth. Civil society rests on the consent not of the ruler but of the

ruled. By bringing out this the theory became an important factor in the development of modern democracy. It served a useful purpose in its time by combating the claims of irresponsible rulers and class privilege. The theory of Divine Right was a more complete instrument of absolutism than the social contract of Hobbes. The chief enemy to the Divine theory was the Contract theory. While the former gave divine power to the ruler, leaving only the duty of implicit obedience to the ruled, the latter brought into prominence the fact that the state and government are actually founded on the minds of the citizens themselves.

CHAPTER IV

THE ORIGIN OF THE STATE—(*continued*)

6. THE THEORY OF DIVINE ORIGIN

General Explanation.—The central idea of the theory of Divine Origin is that the state was founded by God. The type of state in which the ruler is regarded as the vice-regent of God (or, to use a phrase current in the mediaeval literature on the subject, the vicar of God) is called a theocratic or God-ruled state. The Divine theory takes us back to the very earliest stages of political life. Modern research has shown that universally among early peoples the rudimentary forms of government were intimately connected with religion. The earliest rulers were a combination of priest and king. Their powers as king depended mainly on the superstitious dread with which the people regarded their priestly position.

The Old Testament.—The best repository for examples of the theory of Divine origin is the Old Testament, where God is looked on as the immediate source of royal powers. He is regarded as selecting, anointing, dismissing, and even slaying kings. He is pleased or displeased with them : their policy is judged according to the greater policy of God. The king in the Jewish state was the agent of God and responsible to God alone. The early history of the Jews not only gives no trace of the will of the people instituting the king, but shows

the unquestioning acceptance by the people of the theocratic state.

In Greece and Rome.—In neither Greece nor Rome did political theory run in the Jewish channels. Though religion was not divorced from politics, early in their history both the Greeks and Romans gave a definite place to the will of the citizen in political institutions. The Greeks considered the state to be an outgrowth of man's nature. The Roman legend of the foundation of Rome, while not omitting religion, said that the people and king created the state. The blessings of the gods followed.

In Sanskrit Literature.—The idea was current in the epic ages of Sanskrit literature. The *Mahabharata,* in particular, contains many passages which either express or suggest the divine origin of the state. The idea does not occur to any marked extent after the epic age.

The Christian Fathers.—With the advent of Christianity the theory of Divine Origin received a new impetus. For many centuries it held almost undisputed sway. The only counteracting influences were the theory of Roman Law, which regarded the people as the ultimate source of law, and the Teutonic ideas of popular government. The church fathers founded their theory on the well-known saying of St. Paul (Romans x. 1 and 2)—"Let every soul be subject unto the higher powers ; for there is no power but of God : the powers that be are ordained of God. Whosoever resisteth the power, resisteth the ordinance of God, and they that resist shall receive to themselves damnation."

The result was a purely theocratic doctrine. The early church fathers looked on government as an institution founded by God because of the fall of man. Before the fall man lived in a state of sinless innocence, but with the beginning of sin, God instituted government. The king was the representative of God and in the name of God his law had to be obeyed. Two of the greatest of the fathers, St. Augustine and Pope Gregory the Great, teach that the reward of a good people is a good ruler and the punishment of a bad people a bad ruler. [It is in the work of Pope Gregory the Great that the later fathers found most of their authority.] The Roman lawyers traced the authority of law to the people : Gregory ascribes it to God. The insistence on the divine character of authority by the fathers was due to three causes :

first, the influence of the Old Testament, second, the necessity for the abolition of disorder in the early church (the Divine theory proved an excellent lever for the exercise of despotic power in the church); and third, the existence of two powerful bodies, the church and the empire. The cast of mediaeval political theory was determined mainly by the last of these causes.

As we have already seen, the theory of the church writers later underwent a considerable change. The influence of Roman law had always been on the side of the will of the people as a determining factor in political phenomena. Teutonic ideas helped in the same direction, and the later ecclesiastics began to make a difference between the "impulsive" cause (in Latin, *causa impulsiva*) or the "remote" cause (in Latin, *causa remota*)—both of which were God—and the immediate cause, the people. This distinction favoured the growth of the social contract, in which a place was definitely found for the idea of consent.

Uses of the Theory.—Both the Divine theory and the Social Contract theory were used for more than one purpose. We have seen how both absolutism and popular government were justified by the Contract theory. Similarly the Divine theory was used for various purposes; in fact, its use as an explanation of the origin of the state was secondary. One of the best-known uses of the theory was the justification of absolutism. There is no place for the will of the people in a theory which regards the king as the vice-regent of God, and an agent to carry out His orders. The theory was used as a bulwark against the onrush of democratic ideas. For the individual to set himself up against the king was equivalent to disobeying divine law, or committing the sin of sacrilege. Both before and after the Reformation the theory was used by certain ecclesiastics to discredit the civil power as compared with the church. The church, like the empire, had become a vast organisation with wide powers and possessions. To elevate religion it was held that the church received its power from God, whereas the state was a purely human or worldly organisation. The inference was that, as God was superior to man, so was the church superior to the state.

The Divine Right of Kings.—In the sixteenth and seventeenth centuries in England, the form the theory took was the

Divine Right of kings. That theory was supported not only by the Stuart kings but by a large school of thought. Even the absolutism which Hobbes tried to justify by means of the Social Contract was questioned by the royalists of the time. Sir Robert Filmer, for example, declared that Hobbes was wrong in supposing that absolute sovereignty was based on a contract. No such contract was possible, for there was never a condition of man such as Hobbes pictured in the state of nature. Equality never existed, for when God made man, He made Adam master over Eve and the children born to them. Authority was founded from the beginning by God Himself. God is the father of men, and from His fatherhood came royalty, and absolute power.

The Decline of the Theory.—The causes of the decline of the Divine theory were—(1) the rise of the Contract theory, with the emphasis it gave to consent; (2) the rise to supremacy of the temporal as distinct from the spiritual power, or, in other words, the separation of church and state; and (3) the actual refutation of the absolutism which the theory supported by the growth of democracy. Though the theory as an active influence is dead, it is still current in the popular consciousness of to-day. In India in particular we are familiar with the religious reverence with which the throne is regarded, while in Germany the ex-Emperor, both before and during the Great War, often expressed the theory of the divinity of kings as applied to himself.

Criticism. Reason and Revelation.—The chief criticism of the theory is given in the *Ecclesiastical Polity* of Richard Hooker, himself an ecclesiastic. Revelation (or religion), he says, is concerned with matters of faith. In other matters man has reason as his guide. Modern political theory leaves to religion the decision on the question of divine intervention. That God is the origin of or intervenes in the state is not a political but a religious view. The modern political scientist regards the state as essentially a human institution, organised in its government through human agency. It comes into existence when a number of people come together on a fixed territory, and, through their consciousness of common ends, organise themselves politically. No one now accepts the originative power of God as a criterion of the rightness or wrongness of any given form of government. To say that God selects this or that man as ruler is contrary to experience and com-

mon sense. Monarchs conceivably might claim certain powers or qualities consequent on descent from a remote divine ancestor: but it would be very difficult to establish such a claim for a modern president, elected by the people.

Dangers of the Theory.—In this theory, too, as in the Social Contract theory is an element of danger. In a theocratic state the ruler is responsible only to God. Irresponsibility to human opinion might be a grave danger in the hands of an unscrupulous man. Modern research has shown that the priest-king of primitive society not infrequently used his divine status to cheat and oppress his people. The theory also condemns all forms of government except the monarchical. The theory was responsible largely for the ruin of absolute monarchy. It was the "corruption of European monarchy in the seventeenth century." The responsibility of a ruler must be to man. His relations to God must be his own private affair; his relations to man are public. As Bluntschli pointedly remarks, the statesman must not, in the belief that God determines the destiny of nations and states, and in the confidence that God will govern well, "tempt God and shirk his own responsibility."

Contrary to Religion.—Even from the religious point of view it is difficult to justify the theory. The early Christian fathers held that a bad ruler is given by God to men as a punishment for their sins. It is difficult to regard some historical examples of bad rulers as divine, however sinful the people; they may more properly be looked on as living examples of blasphemy. Nor does it appear from history that evil results have always followed from the removal of kings.

The Theory not Supported by the New Testament.—In the New Testament, moreover, there is as much authority against the Divine theory as for it. The very phrase "the powers *that be*" in itself implies the possibility of change in the form of government. But the best-known passage is that on which the separation of church and state is founded,—the statement of Christ's "Render unto Cæsar the things that are Cæsar's and unto God the things that are God's." This is evidence of the human character of the state from the very fountain head.

Its Merits in Early Society.—The Divine theory had its merits. In the days when the terrible nature of religious law appealed to men more than it does now, the idea of divine

origin was useful as a factor in preserving order. However mistaken or unscrupulous the theory was, it at least deserves credit for the prevention of anarchy. The strong arm of the church did much in the dark ages towards the security of person, property and government.

Its Historical Value.—The theory, again, is an emblem of an undoubted historical fact. Early political and religious institutions were so closely connected that it is not possible to describe them separately. The earliest ruler was a mixture of priest (or magician) and king. His power as king depended mainly on his position as priest, a position which allowed scope for various kinds of cruelty and deception.

It explains Survivals in Modern Culture.—The theory, again, explains many modern survivals of the close connection between religion and the state. All great state functions are to-day accompanied by a considerable amount of religious ceremony. Kings are still crowned by religious men with religious rites. State or "established" churches, some of which receive support from the public funds, are still recognised. Ecclesiastics still, as in the British House of Lords, in virtue of their offices, take part in law-making. There are modern examples, too, of religious states, such as Turkey, before the abolition of the Caliphate in 1924.

Its emphasis on the Moral End of the State.—The chief merit of the theory, however, is not in religion as such but in the close connection of religion and morality. To regard the state as the work of God is to give it a high moral status, to make it something which the citizen may revere and support, something which he may regard as the perfection of human life. The law of the state does not cover the field of morality. Morality deals with intentions and motives; law deals with external actions. The state deals with these outward actions only, but its end must essentially be a moral end, and to regard it as the creation of the all-wise and all-good God brings into prominence this central fact of its being.

To use the theory as many have done to bolster up force and authority in the name of divine authority, however, shows how, from what in itself may be perfectly harmless, very harmful results may follow. In this respect the theory is essentially the same as the Force theory. The strength of both the Divine and Force theories lies in their emphasising

one aspect of force—moral force. If the theory meant simply that, as one of the later church writers said, God is a "remote" cause, that God simply implanted the social instinct among men, there would be little harm in it. What Political Science demands is that political institutions should be regarded as purely human creations.

7. THE THEORY OF FORCE

Statement of the Theory.—The theory of Force states that civil society originated in the subjugation of the weaker by the stronger. In the early stages of the development of mankind it implies that those physically stronger captured or enslaved the weaker. This was true not only of individuals but of tribes and clans. From the more rudimentary political organisations it spread in successive steps to the more advanced. Finally kingdoms and empires fought against each other and survived or died according to their strength.

Uses of the Theory.—The Force theory, like the other theories already examined, has been employed as the support of diverse contentions. Some of the church fathers, in order to discredit the state as compared with the church, which, they said, was founded by God, argued that the state was the result of brute force. The Force theory has also been used by writers of the individualist school to prove that it is in the nature of society that the stronger should prevail against the weaker. From this they try to demonstrate that there should be no regulation of competition in industry. The most productive system is that which gives the most unrestricted scope for individual efforts. The other school of thought, socialism, uses the theory for exactly the opposite purpose. The present system of industrial organisation, say certain socialists, is the result of the improper use of force. The state is the outcome of the exploitation of the weaker by the stronger. This force, the origin of all civil society, has continued till at the present stage one part of the community robs the other of its just reward. Government is force organised so as to keep the working classes in check. The object of the socialist is to prove the justice of the worker's claim to a larger share of what he produces.

In Germany.—The theory of Force was widely adopted by writers in Germany before the war. Their chief object was to educate the people in ideas of world domination by Ger-

many. Treitschke, the Prussian historian, puts power or force in the forefront of his definition of the state. "The state," he says, "is the public power of offence and defence, the first task of which is the making of war and the administration of justice." General von Bernhardi, another modern German writer, says that war is a biological necessity of the first importance and the aspiration for peace is directly antagonistic to the first principle of life. Struggle is a universal law of nature, and the instinct of self-preservation which leads to struggle is the natural condition of existence. "The first and paramount law," he says, "is the assertion of one's own independent existence," and from this he proceeds to argue that the right of conquest is justifiable. "Might is the supreme right, and the dispute as to what is right is decided by the arbitrament of war. War gives a biologically just decision, since its decisions rest on the very nature of things."

Criticism. Force necessary in the State.—The Force theory contains a considerable amount of truth. Force is an essential element in the state : it is necessary both internally and externally. Internally the state requires force for the preservation of its unity against disruptive elements. The relation of command and obedience necessary to government implies the existence of force. Externally a state requires force to repel aggression. To set up force, however, as an explanation of the origin of the state, and as a justification of its action, is wrong.

Moral Force and Brute Force.—The Social Contract and Divine theories err in a similar way. The social contract, as used by some writers, justifies the most absolute form of government, and gives no place to resistance. The same is true of the Divine theory. Force may mean either that might is right, that physical, brute strength is the determining factor in state development, or that will or moral force is the basis of the state. The former, physical force, is not a permanent basis of a state ; the latter, moral force, is. Might without right can at best be only temporary ; might with right is a permanent basis for the state. Force does not create rights ; rights, like the state, are founded in the common consciousness of common ends. Mere brute force simply means despotism, violence and revolution, with no rights, save the rights of the physically stronger. True force, that is, moral force, is the permanent foundation of the state. Might

without right lasts only so long as the might lasts; might with right is as lasting as the human minds on which it depends.

Survival of the Fittest.—One aspect of the Force theory requires particular attention. Bernhardi, we have seen, argues that the exercise of force is essential from the very nature of society. Struggle, leading to the survival of the fittest, he says, is a natural law. Sir Henry Maine expresses similar sentiments when he speaks of "beneficent private war, which makes one man strive to climb on the shoulders of another and remain there through the law of the survival of the fittest." Herbert Spencer continually voices the same views. He speaks of the beneficent working of the "survival of the fittest," and he declaims against modern legislators who pass laws to protect weak or unsuccessful members of society who, without their interference, would naturally go to the wall.

To discuss this question would mean a full analysis of the application of the theory of evolution to society, a task which cannot be undertaken here. Certain salient facts may be brought before the student.

Meaning of "Fittest".—The word "fittest" in the phrase "survival of the fittest"—the core of the evolutionist position—means, as Huxley says, the survival of those best fitted to cope with environment in order to survive and breed. As Dr. Marshall says, the survival of the fittest means the survival not of the man who does most good to his environment but of the one who derives most from the environment. In society the circumstances are so varied and complex that the meaning of fittest is by no means uniform. Among both animals and men the fittest may not be the physically strongest. In the struggle for food, for example, physical strength may be worsted by cunning, or the strongest may not survive in an environment where the puny may more easily find food and avoid enemies. What is true of individuals is true of groups of individuals in society, or of races. The strongest may not survive, or they may survive only in the sense that the word "strongest" is applied to those who, whatever their physical strength, actually do survive.

Various Types of Struggle.—In society again the struggle is not only between individuals but between groups or races. In the lower creation the struggle is chiefly between indi-

viduals. Individual struggle between men is largely replaced by the contest between tribes or nations. Tribal or national survival may be achieved at the expense of the individuals. Oppression, slavery, even extermination of individuals may follow group or national survival.

The human individual, further, belongs to different groups. By race he may belong to one group, by language to another, by religion to another, by profession to another, by political allegiance to another, by culture to another. Among these groups struggle for survival goes on, and failure in one may be accompanied by survival in another. Thus a nation may be conquered, but its religion may survive among the conquerors, so that the terms failure or survival may be applicable and non-applicable at the same time.

Conflict of Ideas.—More important in the case of man is the conflict of ideas. Ideas struggle with each other and fail or survive. Ideas are crystallised into laws and institutions, and the survival of ideas means the existence of the institutions embodying them. Thus against the idea of selection by brute force has prevailed the idea of respect for human life. Against the idea of the weak being allowed to die off unprotected have survived the ideas of human kindness and sympathy. Spencerians argue that the human race has suffered by the survival of such ideas ; their opponents reply that, had the physical weaklings gone to the wall, the world would have lost its Miltons and Newtons. The fact is that these ideas exist and prevail, whatever the results of their survival.

The Differentia of Man.—All this points to the supreme differentia in society—consciousness. Man is a thinking agent, whose actions are directed by moral ends. This is in the very nature of man, and the results of his thinking are natural. The state, government, and indeed all institutions are the result of man's consciousness, creations which have arisen from his appreciation of a moral end. Huxley, in a well-known passage, gives what we may accept as the only reasonable contrast between society and nature. "Society, like art," he says, "is a part of nature. But it is convenient to distinguish those parts of nature in which man plays the part of immediate cause, as something apart ; and, therefore, society, like art, is usefully to be considered as distinct from nature. It is the more desirable, and even necessary, to make this distinction, since society differs from nature in having

a definite moral object; whence it comes about that the course shaped by the ethical man—the member of society or citizen—necessarily runs counter to that which the non-ethical man—the primitive savage, or man as a mere member of the animal kingdom—tends to adopt. The latter fights out the struggle for existence to the bitter end, like any other animal; the former devotes his best energies to the object of setting limits to the struggle."

War, the supreme exercise of force between nations, is natural only because it is more primitive. In society the primitive force-struggle is modified by ideas. War undoubtedly has its value: it breeds courage, loyalty, self-reliance, but it achieves them at an enormous cost. Moral ideas—the characteristic of man—enable us to secure these virtues at less cost. In the more primitive world the process of evolution is mainly spontaneous or unconscious. Although man has the power of deliberate choice, the deliberation in primitive society may contain a considerable amount of unconsciousness. The progress of society shows how conscious choice takes the place of the "spontaneity" of the lower forms of creation.

8. THE HISTORICAL OR EVOLUTIONARY THEORY

Factors in Development.—The accepted theory of the origin of the state in modern Political Science is the Historical or Evolutionary theory. According to this theory the state is an historical growth. Its beginnings are unknown to history, but from what we do know from History, Anthropology, Ethnology, and Comparative Philology we can both construct a reasonable theory of origin and recognise a continuous course of development. An analysis of the rise of the state enables us to separate three distinct factors in its growth. These are Kinship, Religion, and Political Consciousness. Though it is possible to separate these elements in an analysis such as is given here, it is not to be supposed that these are actually separated in the process of state building. A clear cut division is impossible; they operate in various combinations. Each element plays its part in achieving the unity necessary for statehood, but the exact method in which it works varies from community to community and from one environment to another.

1. **Kinship.**—A study of early institutions shows that

kinship played a considerable part in early civic development. Blood relationship is an inevitable bond in society, for it is one of the most fundamental facts in individual life. The closest bond of kinship is the family, composed of father, mother and children. With the expansion of the family arise new families, and by the multiplication of families of the same stock tribes or clans are formed. What the direct course of development from the family was is a matter of dispute, but there is no disputing the importance of the fact of kinship. That it was important may be judged from the various legends of their common origin prevailing among nations and nationalities both modern and ancient. Other factors, such as common purpose, entered in the process of development, but the fundamental bond of union was the family, or blood relationship.

On this subject have arisen two theories which require examination—the Patriarchal and the Matriarchal theories. An examination of the former—the Patriarchal—will explain the latter.

The Patriarchal Theory. Maine's Statement.—The Patriarchal theory has its strongest supporter in Sir Henry Maine (at one time legal member of the Governor-General's Council in India), in his books *Ancient Law* and *Early History of Institutions*. The theory may be stated in Maine's own way. "The effect of the evidence derived from comparative jurisprudence is to establish that view of the primeval condition of the human race which is known as the Patriarchal theory. There is no doubt, of course, that this theory was originally based on the Scriptural history of the Hebrew patriarchs in lower Asia ; but its connection with Scripture rather militated than otherwise against its reception as a complete theory, since the majority of the inquirers who till recently addressed themselves with most earnestness to the colligation of social phenomena, were either influenced by the strongest prejudice against Hebrew antiquities or by the strongest desire to construct their system without the assistance of religious records. Even now there is perhaps a disposition to undervalue these accounts, or rather to decline generalising from them, as forming part of the traditions of a Semitic people. It is to be noted, however, that the legal testimony comes nearly exclusively from the institutions of societies belonging to the Indo-European stock, the Romans, Hindoos, and Slavonians

supplying the greater part of it; and indeed the difficulty, at the present stage of the inquiry, is to know where to stop, to say of what races of men it is not allowable to lay down that the society in which they are united was originally organised on the patriarchal model. . . . The points which lie on the surface of the history are those:—The eldest male parent—the eldest ascendant—is absolutely supreme in his household. His dominion extends to life and death, and is as unqualified over his children and their houses as over his slaves; indeed, the relations of sonship and serfdom appear to differ in little beyond the higher capacity which the child in blood possesses of becoming one day the head of a family himself. The flocks and herds of the children are the flocks and herds of the father, and the possessions of the parent, which he holds in a representative rather than in a proprietary character, are equally divided at his death among his descendants in the first degree, the eldest son sometimes receiving a double share under the name of birthright, but more generally endowed with no hereditary advantage beyond an honorary precedence. A less obvious inference from the Scriptural accounts is that they seem to plant us on the traces of the breach which is first effected in the empire of the parent. The families of Jacob and Esan separate and form two nations; but the families of Jacob's children hold together and become a people. This looks like the immature germ of a state or commonwealth and of an order of rights superior to the claims of family relation."

The family, then, he regards as the unit of primitive society, and the family at its lowest means father, mother and children. The single family breaks up into more families which, all held together under the head of the first family, the chief or patriarch, becomes the tribe. Withdrawals from that tribe make new tribes, which, still held together by kinship, act together and ultimately form a state. Maine's ascending scale of development is in these words: "The elementary group is the family connected by common subjection to the highest male ascendant. The aggregation of families forms the gens or house. The aggregation of houses makes the tribe. The aggregation of tribes constitutes the commonwealth."

Maine derives his evidence from three sources—from accounts by contemporary observers of civilisations less advanced than their own, from the records which particular races

have kept of their own history, and from ancient law. These sources provide ample proof of the power of kinship on the development of the state, though we shall find several insurmountable difficulties in the theory as Maine presents it.

Evidence for the Theory.—The chief evidence in favour of the theory is found in the early history of the Jews, especially the Patriarchs of the Old Testament. In Athens there were "families" and "brotherhoods," and in Rome the three primitive tribes with a common origin. In Rome, too, there was the "patria potestas," the power of the father, which gave the head of the household almost unlimited authority over its members. The clan system in Scotland, the tribal system in many countries, the real or fictitious legends of common origin in many nationalities, all these go to show the importance of the family. In India Maine was familiar with the ramifications of the family system, by which very large numbers are included in one household, under the head of the eldest male. In certain rude communities today large groups of individuals have been found in one so-called family, each man having large numbers of brothers or sons or cousins. The Patriarchal theory, adopting this as the unit and supposing the headship bequeathed from one chief to another, by easy stages transforms the father into the chief or king and the family into a civil community.

Criticism of the Theory.—The theory is open to certain very grave objections. Its chief merit is that it points out what is undoubtedly a factor in state development, the family. Aristotle, while recognising the difference between a family and a developed civil community, likewise posits the relation of father to children as a fundamental fact in the origin of civil society. Aristotle said that there were three approximations to civic relations in family life—(1) the relations of a slave-master to his slaves, (2) the relations of a husband and wife, and (3) the relations of a parent to his children. The family is the ultimate form of social union. Command and obedience arise naturally in it, and logically enough it may be considered as the basis of all forms of social union.

Its Simplicity a Danger.—The Patriarchal theory is one of the simplest explanations of the origin of the state, but one of its chief weaknesses is this very simplicity. Primitive is not the same as simple. The more researches that are made into early society, the more is it clear that early forms of social

organisation were very complex. This danger of simplicity applies equally to other theories of the origin of the state. Sir J. G. Frazer, the most outstanding of modern social anthropologists, in his classic work *The Golden Bough,* makes a point of warning investigators against this danger. "He who investigates the history of institutions," he says, "should constantly bear in mind the extreme complexity of the causes which have built up the fabric of human society, and should be on his guard against a subtle danger incidental to all science—the tendency to simplify unduly the infinite variety of the phenomena by fixing our attention on a few of them to the exclusion of the rest. The propensity to excessive simplification is indeed natural to the mind of man, since it is only by abstraction and generalisation, which necessarily imply the neglect of a number of particulars, that he can stretch his puny faculties so as to embrace a minute portion of the illimitable vastness of the universe. But if the propensity is natural and even inevitable, it is nevertheless fraught with peril since it is apt to narrow and falsify our conception of any subject under investigation. To correct it (partially) we must endeavour to broaden our views by taking account of a wide range of facts and possibilities, and when we have done so to the utmost of our power, we must still remember that from the very nature of things our ideas fall immeasurably short of the reality."

The Matriarchal Theory also Supported.—This procedure, applied to the Patriarchal theory, at once raises difficulties in it. In the first place, a considerable number of writers hold that not the patriarchal but the matriarchal family was the unit. This is known as the Matriarchal theory. The upholders of this theory (the chief of whom are McLennan in his *Patriarchal Theory,* Jenks in his *History of Politics* and Morgan in his *Ancient Society*) say there is considerable evidence to show that the primitive family had no common male head, but that kinship was traced through females. Before the patriarchal family there was the matriarchal family. The patriarchal family is possible where either monogamy or polygamy exists, but the earliest form of marriage relation was polyandry, according to which one woman had several husbands. Descent in such a state could only be through the female. The prevalence of queens in Malabar and the power of princesses

among the Marathas may be cited as evidence in favour of the Matriarchal theory.

Though examples exist of polyandrous types of society in various parts of the world, the evidence is not sufficient to justify the Matriarchal theory. The very existence of matriarchal descent, however, is a fatal argument against the Patriarchal theory. The patriarchal family is not universal, and where a male member of a family is chosen as leader, it is evident that some cause outside the family system is in operation.

Adoption a Difficulty.—The existence of another cause is also shown by the fact of adoption. In primitive communities we find that individuals were adopted by families, sometimes in large numbers, in order to give reality to the idea of kinship. The idea behind adoption obviously lies outside the family. Adoption was regarded as necessary to secure certain ends. The meaning of the family as a community is materially changed when this is taken into account. Still more important is the statement of Maine himself that the notions of power and consanguinity (or kinship) blend but they do not supersede each other. In the family was latent the idea of civil authority. The analogy to civil authority may be true in regard to the rule of a father over children, but something else is necessary to explain the continuance of paternal authority over grown men. Physical force may account for the rule of the man over his wife and his children, so long as the children are young and relatively weak, but something beyond force is necessary to explain the power of a weak old man over men in the prime of life. Some deeper foundation exists. In Rome the *patria potestas* was enforced by the state, but where there is no state outside the family the rule could continue only because it was reasonable or because it served certain ends.

Other Elements.—Actual examples of the patriarchal type of society, moreover, show that mere descent alone is not sufficient to establish a new head of the family. Thus in the Slavonic house communities the head was elected, not because of descent, but because of his capacity. Ability to manage is essential to headship. This, again, shows an idea outside mere kinship.

The Power of Kinship.—We may conclude that in early society kinship was the first and strongest bond. As the com-

munity evolved, the sanction of kinship continued till other elements—common customs, common speech, common purpose—became clear. The bond of blood was the first element of unity; the other independent bonds appeared later. The course of history shows the gradual supersession of kinship by these other elements. Thus in the earliest stages of society citizenship was equivalent to the membership, real or pretended, of a common family. Nowadays citizenship in a state practically means residence on or birth within a particular part of the world's surface. The various struggles of class against class, from the patricians and plebeians in Rome to the aristocracy and people of the modern west, or to the Brahmin and Sudra in India, all illustrate the struggle of various elements against kinship, or an aspect of it, heredity.

2. **Importance of Religion to Early Man.**—In the early stages of human society religion was far more powerful than it is now. It coloured every act of human life. In the home, in public life, in war, in festivals it played a predominant part. Every idea, every habit, every custom of primitive man was governed by religion. Its influence in later times is equally manifest. Only in relatively modern times has religion been separated from politics, and this development has taken place only in the advanced communities of the west. To-day in many parts of the world there are primitive tribes where superstition or religion is the supreme arbiter in all matters.

Primitive man, knowing little about the forces or laws of nature, yet recognising their great power, ascribed such power to unseen spirits. He regarded these spirits or gods as responsible for every process of nature. In Greece and Rome, the most advanced communities of the pre-Christian world, agriculture, war, the sea, the sun, each had a presiding deity. To the savage the mystery of death was particularly terrible. The departed spirits were looked on as capable of love and hate, of beneficence and malevolence, and were worshipped, or propitiated by sacrifices. Ancestor-worship, arising from this, was very common, and the worship of departed ancestors had a considerable influence in family life.

Sir J. G. Frazer's Theory.—The religion of primitive man we now call either animism, or merely superstition. For a fuller study of this the student must turn to Anthropology. The most remarkable modern study of the influence of religion

or superstition on the development of political society and social institutions is *The Golden Bough,* the work of Professor Sir J. G. Frazer. In *Psyche's Task* and *Lectures on the Early History of the Kingship,* Professor Frazer gives in small compass the factors particularly bearing on our subject. It must be remembered that the investigation into the subject is modern and incomplete. As Professor Frazer points out, we are only beginning to understand the mind of the savage and his institutions, and the truth once found out "may involve a reconstruction of society such as we can hardly dream of."

Common worship undoubtedly was a most important element in the welding together of families and tribes. This worship was often ancestor-worship. Common devotion to ancestors provided a permanent basis of union. As we have already seen, in early society the family played an all-important part. The family was as much a religious as a natural association. Common worship was more essential than even kinship. The wife, the son, or the adopted son were all initiated into the family religion. With the extension of the family to the tribe, common worship continued to be the bond of union. Tribal union, too, was impossible except for those who performed the same religious ceremonies. Worship thus provided a bond of union in the earliest civic communities, when as yet the end of civic unity was not recognised.

This is further proved by the character of primitive law. No legal relation existed between families or tribes unless the religion was common. The sanction of the law was religion and, as it was the terrible aspect of religion that appealed to primitive minds, the breaking of law was followed by terrible punishment. The relation of command and obedience, natural enough in family relations, was thus definitely established by religion. As far as we can judge, early societies were ruled with a rod of iron by the absolutism of religious law. There was no question of the right of the individual against the state, for no such right existed.

Priest-Kings.—The evidence available points to the existence of monarchies in the religious stage of state development. The kings were priest-kings, combining the duties of ceremonial observances and secular rule. Examples of the survival of these kings exist in historical times. Sometimes they survived as titular kings, their main duties being the

conduct of religious ceremonies. They may have been instituted after the abolition of monarchy in order to discharge the religious duties which the old priest-king combined in one person. Professor Frazer quotes the case of the descendants of the Ionian kings at Ephesus who, though their duties were mainly religious, continued to enjoy certain royal privileges, such as a seat of honour at the games, the right to carry a staff instead of a sceptre, and the right to wear a purple robe. The same writer cites the Spartan kingship as an instance of the double function of priest and king. The two kings were supposed to be descended from Zeus, and as such they acted as the priests of Zeus. A modern example he finds in the Matabeles of South Africa, where the king is at the same time high-priest. Every year he offers sacrifices at certain festivals, and prays to the spirits of his forefathers and to his own spirit, from whom he expects great blessings. "In early society", says Dr. Frazer, "'the divinity that doth hedge a king' is no mere figure of speech."

The Magician Man-God.—Before the days of priest-kings, according to Dr. Frazer, the "magical man-god" held sway. There are two types of "incarnate human gods." "In one type man is looked on as divinely inspired, the inspiration coming either at birth or at some time during his life; the other is a magician. In primitive communities magical rites and incantations are practised both privately and publicly, privately for the benefit or injury of individuals, publicly for the community. The magician thus becomes a public personage of great importance, for the welfare (or the reverse) of the community depends on him. From chief magician the step to chief or king is simple. Once that step is secure, the profession of magician becomes the highest aspiration of the tribesmen. The clever men of the tribe not only appreciate the advantages of the position, but recognise that it is largely through deceit that the position is maintained. The supreme power therefore tends to fall into the hands of the cleverest and most unscrupulous men.

Early Monarchy.—Dr. Frazer regards this step as one of the most important in the history of progress. Before the monarchy of the clever sorcerer was established, the council of elders ruled. Stagnation, social, political and intellectual continued till the emergence, through sorcery, of the clever magician-leader, who, once he reached the height of his

ambition, discarded selfishness and worked in the interest of his community. A single-minded resolute man was infinitely more useful than the "timid and divided" counsels of the elders. The community then grew by conquest or other means, both in population and wealth, two necessary elements in moral and intellectual advance. Despotism at this stage, as in more advanced stages, was the best friend of progress and liberty, for it provided the means of advance and gave scope for the development of individuality.

From the sorcerer, magician or medicine-man developed the priest-king. Dr. Frazer gives a large mass of evidence to show how, after the sorcerers have raised themselves to power, an intellectual revolution takes place. The acuter minds of the tribe recognise the deception of the magicians, and magic is replaced by religion. The magician gives way to the priest, who tries to achieve the same end as the sorcerer not by trying to control the forces of nature but by appealing to the gods. The king, in giving up magic, adopts prayer, but preserves his kingship, and is often regarded as a god because of the possession of his nature by a powerful spirit.

Enough has been said to show the importance of religion in the early stages of state development. The influence of religion in the later stages is a matter of history. Religion has both in the earlier and later stages been a powerful instrument for inculcating obedience and preserving order. By analogy from the effect of religion in the Christian era as well as from direct evidence of ancient law and primitive communities, we may argue that in the earlier stages of religion, when yet it was merely animism or superstition, its power was far greater. When we take into consideration that the relation of command and obedience is the fundamental fact of civil society, we are able to appreciate the great value religion has had in the development of the state.

3. **Political Consciousness.**—Under this general heading may be grouped a number of elements, which, working alongside religion or kinship, helped in the development of the state. Underlying all other elements in state formation, including kinship and religion, is political consciousness, the supreme element. Political consciousness implies the existence of certain ends to be attained through political organisation. These aims in the earliest stages are not expressed; indeed,

they may not be recognised. Other elements, kinship it may be, or religion, may seem supreme, but gradually the ends of political organisation become evident, and political institutions arise consciously because of these ends. At the beginning the political consciousness is really political unconsciousness, but, just as the forces of nature operated long before the discovery of the law of gravitation, political organisation really rested on the community of minds, unconscious, dimly conscious, or fully conscious of certain moral ends present throughout the whole course of development.

Security of Person. Regulation of Family Relations.—Among elements of development which may be classed under this general head are the need for security of person and property, the necessity of defence from external attack, and the need for improvement, social, moral and intellectual. With the increase of population there is the need for the creation of some agency to control the manifold relations of individuals. The first need is order. No settled life or progress is possible without the security of the person. With the increase of population also comes the need for regulating social relations such as the family and marriage. With the increase of wealth arises the necessity for the protection of property.

The Existence of Law.—All these led to some kind of law. In its earliest form law is religious, with terrible penalties. This religious law, as we have seen, secured the relation of command and obedience. At the beginning of history we find men ruled by customary law. Customary law was very rigid, obedience to it being still of a semi-religious character. Progress begins when the people appreciate the purpose of the law, i.e., when mere obedience is succeeded by intelligent obedience.

Earliest Law. Dooms Law.—The earliest type of law, which existed before the invention of writing, may be divided into Dooms law and Customary law proper. Dooms law was merely separate "dooms" or judgments. The relation of cause and effect was not yet recognised, nor was there any idea of universal law. Such laws were merely isolated judgments laid down by chiefs as cases of necessity arose. The existence of such law was really revealed negatively, i.e., when it was broken. Judgment was given after the fact, not as

pre-supposing the existence of a general law bearing on the case. A doom was an inspiration of the moment to suit a given case.

Customary Law.—Customary law proper, also unwritten, emerged when the dooms were regarded as precedents to guide the administration of justice. The laws, instead of being vicarious dicta of chiefs, now became stable. The chiefs or councils of elders became the repositories of legal knowledge and their duties were regarded as a sacred trust. The kings or councils did not actually make the law but were the interpreters of it. This customary law gradually was modified. The influence of migration, whereby tribes became familiar with laws different from their own, brought about this modification. Such comparison inevitably led to questioning. Some laws were better, some worse, and the wiser among the earlier peoples began to ask why. This "why" is the keynote of all progress. It brings to light the end of institutions, and leads to the replacing of custom by thought.

War: Defence.—The need for defence among primitive peoples, with whom the aggressive instinct was highly developed, was equally great. Defence implies attack, and in early communities we find that war created kings. The ablest leader in war became king. This, of course, is true also of relatively highly developed communities. Finally, the need of progress, which marks the latest stage of political development, leads the conscious adaptation of political institutions to certain definite ends. We are accustomed to look on progress as a late appearance in social and political development. The conditions of progress arise, however, as soon as people question among themselves the purpose of their institutions.

9. CONCLUSION

Conclusion.—Several false theories of the origin of the state have been examined; their good as well as their bad points have been brought forward. The chief elements in state formation and development have been specified; but at the conclusion of all this we can do little more than say that the state is a historical growth in which kinship, religion and political consciousness have been the predominant elements. It is impossible to say at what stage any one element predominated, or even when it entered or left the field.

Many Elements in the Process.—In all probability family groups existed before the state, and the state, in a rudimentary form, first appeared as an extension of the family. Religion reinforced family discipline and gradually created the wider discipline necessary to the existence of a state. Custom was the first law, enforced by chiefs or patriarchs. It carried with it a religious sanction. Gradually politics and religion were separated, and definite political ends were responsible for political unity.

Many Variations.—Many variations of the process no doubt existed. A patriarchal state may have prevailed in one place; a matriarchal in another. Magician kings may have existed in one community; priest-kings in another. Any detailed construction of the earliest forms of civic organisation is bound to be fanciful. The main issue is clear, namely, that the state is a gradual development. Its origins are lost in the mists of time, but from the evidence we have we may reasonably conclude that from imperfect beginnings the state has developed and is at the present moment developing towards the well-being of mankind, which, consciously or unconsciously, has been its mainspring throughout.

CHAPTER V

THE SOVEREIGNTY OF THE STATE

1. THE VARIOUS ASPECTS OF SOVEREIGNTY

General Meaning of Sovereignty.—The word sovereignty comes from a Latin word *superanus,* which means supreme. The use of the word as a technical term in Political Science dates from the publication of a work called the *Republic* by the French author Bodin, in 1576. The idea of sovereignty was common before his time, though it was called by other names. In Aristotle we read of the "supreme power" in the state, and the Roman lawyers and mediaeval writers speak of the "fulness of power" of the state. Obviously all reasoning about the state must have some reference to what is really the central characteristic of statehood, whatever name may be given to it. As we shall see, the term has certain definite

applications in Political Science, but the notion of *supremacy* is present in all its uses, whether in Political Science or in ordinary speech. When one speaks of a person, a body of persons, a law, or a state as sovereign, one implies that there is in existence a power which is higher, better, greater than all other powers, a power which is at the very top. In speaking of any human agency as sovereign, we mean that it must be obeyed by other individuals or bodies. It is, in a word, supreme.

Different Uses of the Word in Political Writings. 1. **Titular Sovereignty.**—In Political Science there are several senses in which the term is used, and unless the various uses are clearly understood, the student will be in danger of much confusion. In the first place, the student must be on his guard against confusing the idea of the sovereignty of the state with titular or nominal sovereignty. The word sovereign is frequently used to designate a king or monarch. The king or monarch may seem to be the highest power in the state, but in modern democracies the king is more a servant than a master. The use of the term in this sense dates from the time when kings had absolute power, or the power of final decision. Nowadays the king is a part of the machinery of government, and the term sovereign applied to him is merely a name or title. Such sovereignty may be called titular or nominal sovereignty, and the chief merit of its use for the purposes of Political Science is to call the attention of the student at the outset to the radical distinction between the state and government.

2. **Sovereignty of the State.**—The sovereignty of the state is simply the supreme power of the state, or as Professor Burgess says, "the original, absolute, unlimited power over the individual subject and over all associations of subjects." This sovereignty of the state may be analysed from different points of view, but in itself it is the perpetual and complete power of the state over its members. It is not the power of any part or branch of government, in fact, the distinction between the state and government, as already insisted on, is the key-note to the proper understanding of sovereignty.

The idea of the sovereignty of the state may be looked at from two main points of view: (*a*) legal sovereignty, (*b*) political sovereignty.

(*a*) **Legal Sovereignty.**—The legal sovereign is the authority which by law has the power to issue final commands. It is the authority to whose directions the law of the state attributes final legal force. In every ordered state there are laws which must be obeyed by the citizens, and there must be a power to issue and enforce these laws. The power, whether it be a person or body, to which in the last resort is attributed the right of laying down these laws, is the legal sovereign in the state. The test of the existence, or location of the legal sovereign lies in the law courts. A judge can enforce a law only if it is passed by the legal law-making body. The legal sovereign thus is the supreme law-making authority, recognised as such by the law of the state.

(*b*) **Political Sovereignty.**—The political sovereign is the sum total of the influences in a state which lie behind the law. In a modern representative government we might describe it roughly as the power of the people. It is the power behind the legal sovereign, but whereas the legal sovereign is definitely organised and discoverable, the political sovereign is vague and indeterminate, though none the less real.

The simplest way to understand the difference between the political and legal sovereign is to imagine a small state in which the opinion of the people is expressed by a mass meeting at which every citizen is present. The expression of the opinion does not make a law. Imagine further that in this small state the body legally empowered to make laws is a House of Representatives. The opinion of the mass meeting would be of no avail legally till it was definitely drafted into legal form and passed by the house of representatives. A judge in the courts of the state could not apply the opinion of the mass meeting to a case which came before him but when the opinion was embodied in legal form and passed by the House of Representatives, he would have to apply it, whether he wished or not. The mass meeting represents the political sovereign ; the House of Representatives the legal sovereign, for it is the body empowered by law to issue final commands. The mass meeting might express its opinion clearly, it might even pass a resolution framed in legal terms, but till the law-making body passed it, no judge could take the slightest notice of it.

Relations of Legal and Political Sovereignty.—In modern governments we are familiar with the representative

system. The electorate, by means of voting and electing representatives, indicates to the legislature the type of laws that are desired. In this way it expresses roughly the political sovereignty in the state. Modern democracies are representative or indirect —not pure or direct like the Greek democracies, where the general assembly of the citizens was tantamount to the legislative body. In a direct democracy the expression of the political sovereignty is equivalent to the making of a law. In such a simple case the legal and political sovereigns practically coincide. The distinction between the two is shown in any modern state. It is well brought out in the organisation of the British Government. In the United Kingdom the legal sovereign is the King, House of Lords and House of Commons, technically called the King-in-Parliament. This sovereign is legally all-powerful ; there is no legal limit to circumscribe its power ; it can, as one writer says, do everything except make a man a woman or a woman a man. It is legally unlimited ; it can make or unmake any kind of law ; it can even make legal by an Act of Indemnity what previously was illegal. But this legislative supremacy of Parliament *is* limited, though not legally. It is limited by the will of the people. Parliament could legally make a law compelling the people to kill each other. Actually it would never think of doing so, because the will of the people has to be taken into account. In other words, the political sovereign lies behind and conditions, and thus limits the legal sovereign, though *legally speaking* the legal sovereign is omnipotent. The political sovereign in the state is the influences in the state, which, formulated in a legal way and passed by the legal law-making body, ultimately become the law of the state. The political sovereign manifests itself by voting, by the press, by speeches, and in many other ways not easy to describe or define. It is, however, not organised, and it can only become effective when organised. The organisation of political sovereignty leads to legal sovereignty. The two are aspects of the one sovereignty of the state. They constantly react on each other. Sometimes, as in direct democracy, they practically coincide, and the distinction between the two is recognisable only in theory. In modern large nation-states the distinction is always more or less visible in changes of forms of government, in alterations in the composition of legislatures and changes in laws. The chief aim and problem of modern governmental organisation

is to find a structure in which the distinction is at a minimum.

Popular Sovereignty.—Political sovereignty is to be distinguished from popular sovereignty. The phrase "popular sovereignty" is not used in any real scientific sense; it indicates more what is known as political liberty, which is discussed later. Popular sovereignty roughly means the power of the masses as contrasted with the power of an individual ruler or of the classes. It implies manhood suffrage, with each individual having only one vote, and the control of the legislature by the representatives of the people. In governments where the legislature is organised in two houses, such as the House of Commons and the House of Lords, it further implies the control by the lower, or "popularly" elected house of the nation's finances. The phrase "popular control" better indicates the idea underlying "popular sovereignty."

***De iure* and *De facto* Sovereignty.**—Another distinction is sometimes made, namely *de iure* (legal) and *de facto* (actual) sovereignty. A *de iure* sovereign is the legal sovereign, as explained above. A *de facto* sovereign is a sovereign which, whether its basis is legal or not, is actually obeyed; in Lord Bryce's words "the person or body of persons who can make his or their will prevail whether with the law or against the law: he, or they, is the *de facto* ruler, the person to whom obedience is actually paid." A *de facto* sovereign may be a soldier, who by his army can compel obedience; or a priest, who may so awe the people spiritually that they will obey him whether his claim to obedience is legal or not; or any other agency which can compel obedience.

The existence of *de facto* sovereignty is most easily discernible in times of revolution. There have been instances in Russia, Germany and the old Austria-Hungary, where new powers have displaced the old legally constituted powers. Sometimes revolutions mean merely a change in the existing personnel or organisations, in which case the forms of the old legal sovereignty are fulfilled; in other cases the old legal sovereign is completely abolished, and the people are often in doubt whether to obey the new power or the old. Thus, in Petrograd in 1917, when the Bolshevists came into power, many of the officers of the old government refused to obey them, thinking that the advent to power of the usurping power would only be temporary.

Examples of *de facto* Sovereignties.—Many other instances of *de facto* sovereignties exist. Oliver Cromwell instituted a *de facto* sovereignty after he dismissed the Long Parliament. The Convention, after the Revolution of 1688, which offered the crown to William and Mary, had no legal status. Napoleon, after he overthrew the Directory ; the French Constituent Assembly, convened in France after the 1870 war to make peace with Germany, were *de facto* sovereigns. Since the Great War, legal sovereignties have been in question in Russia, Spain, China and several other states.

Relations of *de facto* and *de iure* Sovereignties—Sometimes in a state there is partly a legal sovereign and partly a *de facto* sovereign, as in some of the unsettled South American republics, where the army actually rules, while nominally the legal government is in power. Frequently it is difficult to locate a *de facto* sovereign. The legal sovereign is discernible according to the laws, but where the legal sovereign is in question or in abeyance, it is very difficult to gauge exactly the power that rules. In a well-ordered state *de iure* and *de facto* sovereignty coincide, or, in other words, right and might go together. *De iure* sovereignty, whatever may happen, has always the legal claim to obedience. Until the law is altered, no judge properly can condemn a prisoner on the orders of a merely *de facto* sovereign. When there is a clash between the legal and actual sovereigns, either the one or the other must disappear, or they must coalesce. Either the legal must be reaffirmed, or the old legal sovereign must disappear and the new actual become the legal sovereign. Ultimately only that right will prevail which has might on its side, and in actual history we find that right and might always tend to coalesce. Sovereignty *de facto,* when it has shown its ability to continue, will gradually become *de iure.* New laws giving a definite position to the new powers will be made, with the result that the previously existing *de iure* sovereignty will disappear. On the other hand, *de iure* sovereignty is difficult to dislodge because the legal power tends to draw force to its side. Men are more inclined to obey and support the legal power than to commit themselves to an unknown *de facto* power. Lord Bryce, in his *Studies in History and Jurisprudence,* sums up the relations between the two thus—

Lord Bryce's Statement of the Relations.—"When

sovereignty *de iure* attains its maximum of quiescence, sovereignty *de facto* is usually also steady, and is, so to speak, hidden behind it.

When sovereignty *de iure* is uncertain, sovereignty *de facto* tends to be disturbed.

When sovereignty *de facto* is stable, sovereignty *de iure*, though it may have been lost for a time, reappears, and ultimately becomes stable.

When sovereignty *de facto* is disturbed, sovereignty *de iure* is threatened.

Or, more shortly, the slighter are the oscillations of each needle, the more do they tend to come together in that coincidental quiescence which is an index to the perfect order, though not otherwise to the excellence, of a government."

De facto sovereignty is characteristic of war and revolutions, and certain rights have come to be recognised in regard to it. Thus when a *de facto* sovereign overcomes a *de iure* sovereign, but not for a sufficiently long time to make the *de facto* sovereignty real, the acts of the supporters of the *de facto* régime are usually pardoned, in an act of indemnity, when the *de iure* sovereign is resumed. *De facto* sovereignties also raise difficulties in international relations. Thus, in the case of the Bolsheviks in Russia, the allied Powers for some time refused to recognise the government, although they had recognised the new government formed when the Tsar abdicated. The test of *de facto* sovereignties is their power of continuance. If they show ability to become ultimately *de iure* sovereignties, they are usually recognised internationally.

The Location of Sovereignty.—The question of the location of sovereignty, so frequently discussed in books on the subject, becomes simple when we keep before our mind's eye the two-fold aspect of the sovereignty of the state. The location of the sovereignty of the state is simply the state and the state alone. Political sovereignty, one aspect of the sovereignty of the state, lies in the will of the people, moulded by the various influences which exist in any body of people. Political sovereignty, as one writer calls it, is the "resultant, or better still, the organic compound which includes the forces of every man and of every agency made or directed by human skill and intelligence within the society". It is the centre of the national forces, or, in the words of the same writer,

"the concentrated essence of national life, majesty and power focussed to a point". Political sovereignty lies with the people; it is a real, ever-existing power, which is co-terminous with the state itself. *De facto* sovereignty or, as Bryce calls it, "practical mastery", seems at times practically synonymous with political sovereignty in the sense that political sovereignty is the ultimate deciding factor in legal sovereignty; but *de facto* sovereignty is really the actual power which is obeyed at any time, whether it is *de iure* or not, or whether it rests on the will of the people or not. Political sovereignty is the power the organised issue of which is legal sovereignty. The location of legal sovereignty in a state is a matter for lawyers. In some governments it is easy to tell where the legal supremacy lies. In the United Kingdom it lies in the King-in-Parliament. Where, as in most modern governments, the legislature is limited by a rigid constitution, the discovery of the legal sovereign is more difficult. Where such a constitution exists, the ordinary legislature has powers only within certain prescribed limits: the legal sovereignty ultimately rests in the constitution.

Sovereignty as the Sum of Law-making Bodies.—The theory sometimes advanced that sovereignty is placed in the sum of the law-making bodies within the state, rests on a confusion between the state and government. The sovereignty of the state, say those who hold this opinion, means the expression of the will of the state, and all law-making bodies share in expressing this will. These law-making bodies, however, express this will only because of the sovereignty of the state. The legislature in any state may delegate powers to county councils, district boards, municipalities, and so forth, but these powers of the organs of government are merely concrete expressions of the sovereignty of the state. They are not divisions of the sovereignty of the state, but manifestations of its organic unity.

History of the Theory of Sovereignty: The Middle Ages.—The modern theory of sovereignty arose with the modern national democratic state. In the Middle Ages there was really no state in the modern sense. Feudalism had to break up before the modern idea of a state could emerge. Feudalism was a governmental system based on personal allegiance, and the idea of the sovereignty of a person, or king was the natural result of the system. Co-existent with feudalism were the

antagonistic claims of the church against the empire, leading to the ever-discussed question whether the temporal power (the empire) or the spiritual power (the church) was supreme. The modern theory, which regards sovereignty as the original, absolute and undivided power of the state, could not arise in such circumstances, especially as many of the writers of the middle and early modern ages added to the confusion by saying that either the law of Nature or the law of God was sovereign. With the disappearance of feudalism, the way was paved for the appearance of the modern theory, but it took centuries for thinkers to throw off the feudal confusion of state and government. Feudalism gave the idea of the territorial sovereignty of a king or prince. As the intermediate lords of the feudal system died out, the king's power and importance increased until he ultimately stood supreme. And it was only gradually, as the nature of the state was properly understood, that the sovereignty of the state as distinct from the sovereignty of an individual or part of government came to be recognised. The climax of the confusion in the identification of state and government is well represented in the historic utterance of Louis XIV. of France, "The state is myself."

Bodin.—The first modern ideas on sovereignty came from France, in the writings of Jean Bodin, in the sixteenth century. The state Bodin defines as an aggregation of families and their common possessions ruled by a sovereign power and by reason. Sovereignty he defines as "supreme power over citizens and subjects unrestrained by the laws". Bodin emphasises the perpetual nature of sovereignty; he says that there is no limit of time to it, though he admits that there may be life tenure of the supreme power. The chief function of sovereignty is the making of laws, and according to him the sovereign is free from the laws thus made. But he is not free from all laws, for all men are bound by Divine law and the laws of Nature and of Nations. Bodin grants that a legal sovereign is under these laws (of Nature or God), and is answerable to God. Regarding civil law, he says that the sovereign's will is the ultimate source of law, and is free. If the sovereign wills a change, the old order does not hold.

Bodin deals with legal sovereignty, for, he says, sovereignty may reside in one person or in a body of persons, the former

being the better. Bodin is thus an absolutist, but he makes the proviso that the law of God or law of Nature be observed.

Hobbes, Locke, Rousseau.—Hobbes, whose theory of the Social Contract we have examined already, says that the sovereign is the person or body to whom the individuals in the state of nature agree to surrender their natural rights and liberty. This surrender is absolute, hence the sovereign is absolute, supreme in everything, able to change all laws. He is under no human power whatsoever. The sovereign power he regards as indivisible and inalienable, and the source of all legislative, executive and judicial authority. Hobbes followed the absolutist lead of Bodin, and his theory, like Bodin's, is one of legal sovereignty only.

Locke, as we have also seen, gave a theory of sovereignty based on the social contract. But he carefully avoids the term "sovereignty"; instead, he uses the phrase "supreme power". "There can be but one supreme power," says Locke, "which is the legislative, to which all the rest are and must be subordinate, yet the legislative being only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them." Thus, according to Locke, there are two "supreme powers" in the state. Of these two the community is always the supreme power; but this supreme power of the community is held in abeyance and is exercised only when the government is dissolved, and a new government has to be created; but so long as the government subsists, the legislative wields the supreme power. This distinction was worked out in the nineteenth century into the clearcut concepts of political sovereignty and legal sovereignty.

Rousseau.—It is to Rousseau, however, with his idea of the sovereignty of the general will, that the modern theory owes its immediate origin. According to Rousseau, sovereignty is the absolute power which the social contract gives the body politic over all its members, when this power is directed by the general will, i.e., by the will of the citizens as a corporate whole. This general will (whether it means "the will that wills the common good", or "the will of the majority", or, what we may call, "public opinion") is with Rousseau, the sovereign. The sovereign, as conceived by Rousseau, stands out as absolute, infallible, indivisible, inalienable. It

finds its source in an original contract and abides permanently in the body politic. Rousseau thus accomplished for the people what Hobbes had done for the ruler.

Later Developments.—From Rousseau onwards the theory of sovereignty has gradually developed to its present form. Rousseau's ideas provided the groundwork on which it has been built. The philosopher Bentham and the lawyer Austin, whose theory is examined later in this chapter, presented legal views of sovereignty on the hypothesis that the state was the supreme organisation; its powers, or the powers of its organ, government, were unlimited and irresistible. The philosophic side of the theory, presented by such writers as Green and Bosanquet, justified the supreme power of the state by the end which it subserves. The state to them is the expression of the social nature of man; as Aristotle held, it exists "for the good life". Both lawyers and philosophers have looked on the state as a unity. For some time, however, there has been a growing school of thought which is inclined to question the hitherto accepted conceptions of the state and sovereignty. According to this school, the state is a mere abstraction; the reality is government, and government represents not a real unity of the people but the interests of a particular section which happens to be dominant at a given moment. Among the citizens of any given state there are various social groups, each with its own interests, and it is the will of the group which happens to control the governmental machinery which the state expresses for the time being. As the sovereignty of the state is really the sovereignty of government, so the sovereignty of government in its turn is only the sovereignty of a particular group, the aims and objects of which may clash with those of other groups. The existence of such groups, some of which are international in character, it is argued, destroys the hitherto accepted idea of the all-comprehensiveness of the state. The old idea, therefore, is said to be breaking up; the state is not a unity; in philosophical language it is "pluralistic" not "monistic."

2. PLURALISM

General Statement.—The pluralistic attack on the traditional theory of sovereignty of the state is an index, and reflection of the increasing complexity of social organisation. In modern highly developed communities, there are

innumerable groups or organisations—religious, political, professional, occupational, commercial—to which individuals belong; indeed, in his everyday life, the individual is more concerned with such group life than with his citizenship of the state. He may be a member of a trade union, or of a professional association, or of a chamber of commerce, or of a religious organisation. Many individuals are members, and active participants in the work of several such groups. These groups, some writers hold, have an existence which is independent of the state, or government. Government, it is admitted, is the principal of such groups; but it is only *primus inter pares,* or first among equals. It is not the sole repository of power, or focus of loyalty. It cannot therefore be said that it possesses an absolute or all-exclusive sovereignty.

Pluralist Writers.—The pluralist doctrine has been enunciated from various points of view, and with different emphasis by several well-known modern writers, such as Professor Laski, perhaps the leading modern exponent of pluralism, Dr. J. N. Figgis, the Guild Socialists, of whom Mr. G. D. H. Cole is the most prominent, in Great Britain, and some jurists, such as Duguit in France. The germ of pluralism is to be found in the work of the German jurist, Von Gierke (1844-1921), whose monumental work on the legal theory of corporations, part of which was translated, with a sympathetic introduction, by the English jurist, F. W. Maitland, in his *Political Theories of the Middle Ages* (1900), gave an impetus to the idea of corporations as legal entities, with a life of their own independent of government. According to Gierke, such corporations, or associations have their own rights, duties and functions. They formulate their own laws, and exist as corporations irrespective of the wishes or desires of individual members. Their functions exist independently of the state; they may be even prior to the state. Thus the state, or government, is only one law-making authority; it is true, it may be the chief law-making body, but it is not exclusive.

Writers on Sociology also have encouraged the pluralistic idea. Dealing with the organisation of society as a whole, sociologists tend to regard the state, or government, as covering only a part of human activity; accordingly, they concentrate on group life, in its various manifestations. The French jurist, Duguit (1859-1928), approached the question of sovereignty from a different point of view. He regards law as

purely objective; law is merely a set of rules which have evolved in society, and which are obeyed merely because people have to live in society. Duguit rejected what he termed "metaphysical" or "subjective" notions of law. There are no "subjective" rights behind law: law consists merely in "objective" rules. Law therefore is not the creation of the state; it is prior to, and independent of the state, which may be limited by law. The state he regarded as only an organisation of individuals, in which the strong have the power of governing the weak. It is only a group of governors, and is itself subject to law. It therefore cannot be called a sovereign body. The sovereign state, as distinct from a body of governors, he regarded as merely a metaphysical idea.

Group Functions and Sovereignty.—Not an unusual feature of pluralistic criticisms of sovereignty is that the individual writers wish to lay stress on some particular type of autonomous organisation or support some special type of social organisation, such as socialism. Thus Dr. Figgis develops his ideas to bring into prominence the autonomous rights of churches. Others tend to emphasise the rights of professional groups, while Professor Laski is especially concerned with the rights of labour organisations. The different points of view put forward by the pluralist critics indicate the chief weakness of their position. Of the separate, and legally independent existence of groups, or associations, or corporations, there can be no doubt. Modern society is honeycombed by such organisations. In several countries economic associations have been started deliberately by governments to aid them in the formulation of policy and the passing of laws. Trade unions, professional associations, occupational groups of all kinds have grown up either on their force, or have been encouraged by governments. These associations have their own laws, usages, rights, duties and loyalties. Of this there can be no question; but it is quite another thing to say that they rank equally with the state or government, or that they are only slightly less important. A doctrine of groups, as distinct from a doctrine of unity, can lead to only one conclusion—the abolition of the state: indeed, Professor Laski definitely says that it is time that the idea of the sovereignty of the state was abandoned. If the sovereignty of the state were abandoned, then the state also would have to go, for sovereignty is essential to the idea of the state. Were the state

abolished, apparently, in the view of the pluralists, it would be replaced by an almost infinite series of more or less autonomous groups. This is not far removed from a condition of theoretical anarchy, in which each individual's conscience is the arbiter of his actions. Professor Laski, indeed, goes so far as to say that the competition among groups would have to be settled ultimately on the basis of the moral appeal of the group to the individual.

The State not a Duality.—The pluralistic attack on sovereignty arises from too great concentration on the legal aspect of sovereignty. No one denies that groups or associations may have their own laws, duties or loyalties; but the very condition of the existence of groups, rights and loyalties is the state. It is the will of the state, which, either explicitly or implicitly, allows the groups to exist, with their laws, customs, and rights. It is true that groups may sometimes clash with governments, or that governments may have to accept the dictates of a group; but it is ridiculous to say that, because of such clashes, there is no such thing as sovereignty. Group opinion, or group will is merely part of the political sovereign, but group law can never replace the will of the state; the moment a group can arrogate to itself the power of the state, then that group becomes government itself, expressing the will of the state. There cannot be two states. The state is a unity; from its very nature it cannot be a duality, trinity, or multiplicity of powers. So it is with sovereignty. Sovereignty is an emblem of statehood: no sovereignty, no state; no state, no sovereignty. There is no middle way.

The Political Sovereign.—The value of pluralism is that it invites attention to important features in the actual practice of modern governments. No government formulates policy or passes laws or attempts to express the will of the people without first considering what that will is. The various groups, professional associations, occupational and commercial bodies, on which the pluralists lay such emphasis, all help in the formulation of such will. India provides an excellent example of this. In India both the central (or federal) and provincial governments for many years have followed an elaborate procedure in law-making, according to which the executive government consults civic, trade or professional associations before a proposal is put before the legislature.

It is also a common feature of procedure in the legislatures in India for a bill to be circulated for the purpose of eliciting public opinion before it is seriously taken into consideration. Such circulation means that the bill is sent to all recognised associations concerned with the subject matter in order that they may make such suggestions as they wish. If it is a matter of general interest, the bill is also usually circulated to Divisional and District Officers so that they may obtain opinion locally, either from leading individuals or from local organisations. All this elaborate procedure represents an attempt on the part of government to ascertain the will of the people, the ultimate sanction of the proposals lying with the legislatures. The group opinion becomes part of the sum total of the political sovereignty which ultimately emerges into the legal sovereign. This is quite different, however, from regarding the groups as autonomous and independent.

Pluralistic Idea Illogical and Dangerous.—Many pluralist writers attempt to translate their attack on the monistic theory of sovereignty into practice by suggesting more or less elaborate re-organisations of soicety, but whatever the system of organisation proposed, whether it be state ownership or a series of guilds as advocated by the Guild socialists, somewhere ultimately there must be an organisation to co-ordinate the groups, and this organisation must represent the final will of the people; otherwise the groups must remain discrete or uncoordinated; there would be no organ to express the common will. Moreover, if it were once admitted that groups had rights independent of the state, then the dangerous conclusion follows that, irrespective of the objects of the groups, they could continue to exist. If the individual conscience were to determine the validity of group opinion, then any subversive group could claim a right to function. Again, what is true of the larger groups, such as economic councils or trade unions, is true of smaller. If a large trade union were to have powers independent of the state, a similar claim could be put forward for a village debating society, or, perhaps, even for a criminal organisation. Further, pluralism is anti-patriotic; it is a doctrine of revolution and internationalism. It has become fashionable among some writers of a left-wing cast of thought to decry and disparage patriotism and national loyalty; but there is no gainsaying the fact that patriotism is still the most potent force in civic life. The Great War

proved that patriotism transcends local, professional and sectional interests, and also academic theories of disruption. Although Russia for a time was dismembered, and Italy and Germany for a time threatened to follow suit, the unified state ultimately triumphed. Fascist Italy, in particular, organised on a system not unlike that advocated by pluralist Guild socialists, has shown how the sovereignty of the state is supreme over the will of groups. Driven to its logical end, pluralism would disintegrate society, replacing order and the conditions of progress, by a chaotic mass of bodies or groups, all contending for supremacy. The monistic doctrine on the other hand, provides for unity and order. The sovereignty of the state with its two aspects—legal sovereignty and political sovereignty—is simple and logical. It assumes the unity of the state, and at the same time it recognises the forces which lie behind the state-will.

3. CHARACTERISTICS OF SOVEREIGNTY

The various characteristics of the sovereignty of the state may now be summed up as follows :—(1) Absoluteness ; (2) Universality ; (3) Inalienability ; (4) Permanence ; and (5) Indivisibility.

1. **Absoluteness.**—The sovereignty of the state is absolute and unlimited. Were it not so, the state would not be a state but a body of people subordinate to another state. Sovereignty is the supreme characteristic of statehood, in fact, so indissolubly are they connected that, as indicated above, we may say no state, no sovereignty ; no sovereignty, no state.

The absoluteness of the sovereignty of the state implies—

(*a*) That within the state there is no power superior to it.

(*b*) That outside the state there is no power superior to it.

The absoluteness of the sovereignty of the state means the unlimited power of the state over its members ; no human power is greater than the state. Such absoluteness really implies the other characteristics—universality, inalienability, permanence and indivisibility. The theoretical absoluteness of sovereignty is modified only when sovereignty issues into power as exercised by government. The *exercise* of sovereignty belongs to government, and in the exercise of sovereign power government is limited. But the limits are not legal limits

to the sovereignty of the state. They are limits to the practical exercise of sovereignty. These limits arise from the very nature of the state. The state would not exist but for individuals; and government, the organisation of the state, is composed of individuals. Government, therefore, which exercises sovereign power, is limited because of its very nature, by the ordinary limitations of human individuality. The supreme function of government—law-making—is governed in its exercise by the fact that laws are made for finite men by finite men.

The Limitations of Sovereignty.—Thus the sovereignty of the state as such is one and supreme, but there are influences which affect the exercise of sovereignty. We have already shown how political sovereignty conditions legal sovereignty. Professor Dicey has summed up the limits to the legislative supremacy of the British Parliament thus: (1) The external limit—which lies in the possibility that the citizens may disobey or resist laws, and (2) the internal—which arises from the very nature of the body or person exercising sovereignty. The sovereign is thus a body (or person) of moral beings (or a moral being) who impose (or imposes) the inevitable limits of their (or his) personality on their (or his) powers. Even the most despotic ruler is limited by both these considerations. The most absolute ruler could not make or unmake any law at his pleasure, for all subjects, however, obsequious they may be in many respects, have limits of human endurance. His own character, environment, education and religion, must also mould his actions. There are, accordingly, limits of individuality, expediency and common sense. Bluntschli expresses the same truth in a well-known passage: "There is no such thing as absolute independence—even the state as a whole is not almighty: for it is limited externally by the rights of other states and internally by its own nature and the rights of its individual members." This limitation of the "natural rights" of the members is the external limit mentioned by Dicey.

Limits of Natural or Divine Law.—Many writers—especially earlier writers on sovereignty—have declared that sovereignty is limited by natural law, or divine law, a limitation that has been expressed in such terms as eternal principles of morality, natural justice, and religion. The remarks made above about the internal limits of sovereignty

apply here also. In the same way as moral universals guide individuals, they guide the organisations of individuals. The principles of morality undoubtedly affect the exercise of sovereignty, whether the morality be called natural law (universal principles applicable to all mankind) or the law of God. Both the law of Nature and the law of God have to be interpreted by human agency; and these laws—of Nature and God—exercise no sovereignty in themselves. They are not legal limits on which a judge could insist as standing against the expressed will of a state in the actual state-laws. They are not legal limits, but conditions of law-making.

There are, however, one or two limits which have become prominent during the last century, and which merit fuller consideration. The sovereignty of the state, it is held by some, is limited (*a*) by its own fundamental laws, as drawn up in its constitution, and (*b*) by international law.

(*a*) **The Limitation of the Constitution.**—Most modern states make a distinction between fundamental laws and ordinary laws. The fundamental laws are those general principles which are drawn up to guide future legislators and administrators. They are regarded as more important than ordinary laws: in fact, ordinary laws are valid only in so far as they are in accord with the spirit of fundamental laws. These fundamental laws are drawn up in a single document called the constitution, and the constitution cannot be altered save by some special process of law-making. The ordinary legislature cannot amend, abolish or add to the constitutional law. Such constitutions are called "rigid", as distinct from "flexible" constitutions, where there is no distinction between fundamental and ordinary laws. The most notable flexible constitution is that of the United Kingdom, while the constitution of the United States of America is a typical example of the rigid.

The existence of such laws limits the ordinary legislature of the United States. It reduces it to a position analogous to that of a British municipality or railway company, the constitutions of which are laid down by Act of Parliament. India is like the United States of America in this respect, for its legislature is a subordinate law-making body, limited by higher law—viz. a law of the Imperial Parliament, which acts as its constitution. The legislatures of India are subordinate, indeed, but so are the legislatures of France

and the United States. Actual legal supremacy rests in the constitution. But the sovereignty of the state of the United States or France is not limited. The American people could sweep away the constitution and all appertaining to it and establish a legislature like that of Great Britain. The constitution limits the government, not the state. Only in so far as the state wishes to have these limitations do the limitations exist.

(*b*) **The Limitations of International Law.**—The limits of international law may be reduced to the same terms. Each state is independent and interprets for itself how far the principles of international law are to apply. International law is not law in the ordinary sense of law. It is more like international principles of morality. These principles are somewhat like customary law. As a rule they are obeyed, but ultimately the individual states have to say what laws apply to them and how they apply. There are as yet no international courts to enforce international law, though there are courts to interpret it; and what we find in practice is that states interpret international law for themselves, often as they find it expedient. When there are international courts to enforce international law, then states independent at present will no longer be independent.

All these limits to sovereignty, paradoxical as it may seem, are limits and not limits at the same time. Sovereignty is supreme power, and, as Austin has told us, supreme power limited by positive law is a contradiction in terms. The so-called limits are not legal limits to the sovereignty of the state. They are limits to the exercise of sovereign power, or, rather conditions of law-making, and most of them arise from the very nature of man and society.

2. **Universality.**—The sovereignty of the state applies to every citizen in the state. No person, no union or organisation, however universal, affects the sovereignty of the state. An organisation, for example, like the socialist "International", though it may be excellently organised and have members in every country of the world, does not destroy the sovereignty of any one state. It could only do so by setting up a new international state with a sovereignty of its own which would destroy the sovereignty of individual states.

Extra Territorial Sovereignty.—The only apparent exception to the universality of sovereignty is what is known as

the extra-territorial sovereignty of diplomatic representatives. An embassy in a country belongs to the country it represents, the members of the embassy being subject to the law of their own country. This, however, is only a matter of international courtesy and is no real exception. Any state in virtue of its sovereignty could deny the privileges so granted.

3. **Inalienability.**—"Sovereignty," says Lieber, the well-known American writer, "can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life and personality without self-destruction." The state and sovereignty are essential to each other. This does not mean that the state may not give up part of its territory, or, as it is said, cede sovereign rights. The ceding of sovereign rights does not mean ceding the sovereignty of the state as such ; in fact the cession of such rights is an excellent example of the working of the sovereignty of the state. All that happens is that, whereas formerly there was one state, now, with such cession, there are two states. Far less does the abdication of a monarch or sovereign mean the alienation of sovereignty. It is merely a change in the form of government caused by the resignation of his position by a titular sovereign.

4. **Permanence.**—The sovereignty of the state is as permanent as the state itself. The cessation of sovereignty means the end of the state ; the cessation of the state means the end of sovereignty. We have noted above how Hobbes, in his confusion of state and government, regarded the immediate succession of a king on the death of his predecessor as necessary to the continuance of the state. The death of a king or president, however, is only a personal change in the government, not a break in the continuity of the state.

5. **Indivisibility.**—The indivisibility of sovereignty arises from its absoluteness. There can only be one sovereignty of the state ; otherwise, there would be more than one state.

Sovereignty and Federalism.—On the subject of the indivisibility of sovereignty much has been written, and much authoritative opinion has been given on either side. The question of the divisibility of sovereignty came to the front particularly with the development of federal government. In a federal union, such as the United States, there are three chief grades of powers—first, the constitution, which contains the general conditions of government for the whole of the United States, and beyond the limits of which no legislature

can go without amendment to the constitution itself; second, there is the federal government, or government of the United States as a whole; and, third, there are the governments of the individual states which make up the union. The Government of the United States is empowered to legislate on certain matters, the governments of the States on other matters, and these governments are supreme in their own spheres, which are decided by the constitution.

The question of the divisibility of the sovereignty of the state is not affected by federalism. A federal union makes one complete state, and only one, with, therefore, one sovereignty. One aspect of the sovereignty of the state, some writers hold, does admit of divisibility, and that is legal sovereignty. Legally the constitution of the United States, or any federation or confederation, grants supreme powers to various units of government. To call this a division of sovereignty, however, is due to a misuse of the word sovereign. The division of governmental powers which the constitution grants is quite another thing from the division of the sovereignty of the state. In this matter, as in many others, Political Science is at variance with popular usage. We speak of the "states" of America when we mean the units which form the one state called the United States of America, whereas they are not states at all. They are subordinate law-making bodies with guaranteed powers; but they have not sovereignty. The student would be well advised to keep in mind the difference between the sovereignty of the state and legal powers granted by a definite legal instrument. It is technically as correct to say that a municipality is sovereign with the limits set by the constitution given it by the central government, as to say that the "states" of the United States are sovereign. Were we to adopt this attitude, then sovereignty could be divided into thousands of fragments. The truth is that there is only one sovereignty of the state, which in its legal aspect issues into the various powers of its organisation, or government.

This idea of divided or dual sovereignty, therefore, arises from the usual cause—the failure to distinguish state and government. All states are units with one and only one sovereignty: but in their organisations they vary one from another. The division of power or delegation of power by one part of the organisation to another no more affects the

central fact of undivided sovereignty than the existence of many nerve centres affects the existence of only one head in the human body. The hot arguments centred in this question, ending in the United States with a civil war, arose from a very natural desire of states which lost their sovereignty when they became units of a federal system to preserve at least the theory of their lost supremacy.

4. AUSTIN'S THEORY OF SOVEREIGNTY

An analysis of the theory of Austin will show the application of the various points mentioned above. John Austin was an English lawyer who wrote a book on Jurisprudence (published in 1832), containing a theory of sovereignty which has been violently criticised by practically every subsequent writer on the subject of Political Science. His theory is the outcome of the teaching of Bentham and Hobbes, but it is by no means the same as their theories. The criticism evoked by Austin's theory may justly be said to have led to the modern theory of the sovereignty of the state.

Law, Austin considers, is a command given by a superior to an inferior, and, with this guiding conception, he goes on to develop his theory in these words :—

Austin's Statement of the Theory of Sovereignty.— "The notions of sovereignty and independent political society may be expressed concisely thus. . . . If a determinate human superior not in the habit of obedience to a like superior receive habitual obedience from the bulk of a given society, that determinate superior is the sovereign in that society and the society, including the superior, is a society political and independent." He goes on, "to that determinate superior the other members of the society are subject, or on that determinate superior the other members of the society are dependent. The position of its other members towards that determinate superior is a state of subjection or a state of dependence. The mutual relation which subsists between that superior and them may be styled the relation of sovereign and subject or the relation of sovereignty and subjection." That is, in every independent orderly political community there is some single person or body of persons which can compel the other persons in the community to do as he or it pleases. The sovereign may be a person, or the sovereign may be "collegiate",

(i.e., a group). Every community has a sovereign somewhere, for, supposing a community is broken up into parts, as in a revolution, it will settle down ultimately and a state of equilibrium will be reached when the sovereign will be discoverable in the new scheme of things. Thus, before the rupture in America the sovereignty resided in one place, and after the Declaration of Independence in another. This sovereign, either single or collegiate, occurs in every independent orderly community, and it always possesses ultimate and irresistible force. Austin says that if a single person is sovereign, he is a monarch, if a small group, there is oligarchy, if a small group, but larger than oligarchy, an aristocracy : if it is a large numerous group then it is democracy. Austin did not believe in a limited monarchy, e.g., he calls the government of Britain an aristocracy.

Conclusions following from his Theory.—Certain conclusions follow from his theory :—

(1) The superior or sovereign must be a determinate person or body; therefore neither the general will nor all the people taken together can be sovereign.

(2) The power of the sovereign is legally unlimited or absolute, for a sovereign cannot be forced to act in a certain way by any command of his own. He makes his own limits.

(3) Sovereignty is indivisible. It cannot be divided between two or more persons or bodies of persons acting separately, for, if so, one would be limited in some way by the other, which would be a superior power, and therefore the real sovereign.

Criticism of Austin's Theory.—These are the main points of Austin's theory. Obedience and rule are the essential factors for the existence of a state, and a law is a command of the sovereign which demands obedience. A legal right is distinctly a state matter : it is granted by the sovereign authority and it will be upheld by the sovereign authority. It must be noted that the rights are *legal* rights, not moral or religious rights. The notions of law, right, and sovereignty run together, and in considering the theory of Austin we must remember that he gives a lawyer's view of sovereignty, i.e., legal sovereignty.

Maine's Criticism.—In all Austinian "determinate" sovereigns there are limits of some kind—the external and internal limits mentioned above. Even despots rule according to

the limits of common sense. Sir Henry Maine in particular criticised Austin on these grounds. Maine's experience in India had shown him that there is not necessarily a determinate body or person who is obeyed. He saw the power of custom in India, and that this custom controlled the people and rulers alike. Not only so, but custom is not a deliberate statute; it is the outcome of ages. Certainly it is not the fiat of a determinate superior. Maine's example is Ranjit Singh of the Punjab, who in Maine's words, never "issued a command which Austin would call a law", for the rules which regulated the lives of his subjects were derived from their immemorial usages, and these rules were administered by domestic tribunals, and, as Maine says, Ranjit Singh was a ruler the smallest disobedience to the command of whom would have meant death or mutilation.

This position Austin met by allowing the principle that "what the sovereign permits he commands". This is true so far. The English common law, for example, is not made by Parliament. It exists in customs, which are explained, modified, or expanded when the courts apply them. They are laws all the same, the courts taking cognizance of them as much as they do of parliamentary statutes. The King-in-Parliament as legal sovereign could, indeed, alter the common law, or make it statute law, thus making it a definite command of the legal sovereign. But much of the common law it could not alter without much danger to the state, for to try to upset tradition and custom might lead to revolution. Did Parliament merely make common law into statute law, the process would be an excellent example of the power of custom as influencing Parliament. In India the power is even clearer, for the legislative sovereign has to accommodate itself to deeply ingrained popular customs, which are often based on religion.

Difficulties in the Application of Austin's Theory.— The difficulties of the Austinian theory are more marked when he applies his principles to existing states. He applies his theory to two in particular—(1) Great Britain; (2) The United States. Let us examine the former. In England, he says, one component part of the sovereign or supreme body is the "numerous body of the Commons", who exercise their sovereign powers through representatives. In other words, he says that the electorate is a component part of the sovereign,

and it exercises its powers by electing representatives. Yet he says the electors delegate their powers to the representatives "absolutely and unconditionally", so much so that the "representative assembly might concur with the king and the peers in defeating the principal ends for which it is elected or appointed", i.e., it might deprive the people of their vote altogether. Therefore, he holds sovereignty resides with the King, Lords and Commons (not electors). But that sovereignty, he says, returns when Parliament is dissolved. This antinomy leads to one of the most glaring fallacies in his whole position. He goes on to say that, although the electorate delegates its powers absolutely or unconditionally, yet it may do so "subject to a trust or trusts". Then he goes on—"I commonly suppose that the Parliament for the time being is possessed of sovereignty. But speaking accurately, the members of the Commons house are merely trustees for the body by which they are elected or appointed, and consequently the sovereignty always resides in the king and peers with the electoral body of the Commons."

Thus Austin says variously that—

(1) Parliament is sovereign.
(2) The King and Peers and electors are sovereign.
(3) The electorate is sovereign when Parliament is dissolved.
(4) That the Commons have powers (*a*) free from trust, (*b*) are trustees.

Legal and Political Sovereignty.—The Austinian difficulty is easily solved by the simple device of the separation of the two conceptions of legal and political sovereignty. Austin's theory is the attempt of a lawyer to give a lawyer's view of sovereignty, i.e., legal sovereignty. In placing legal sovereignty in the United Kingdom in the King-in-Parliament he is right : but he does not stop there. He tries to give a place in his theory to the influences which lie at the back of legal sovereignty and this leads him into hopeless confusion. The electorate has no part in legal sovereignty : nor are the representatives in any sense trustees. No court would pay any attention to an act made by any other body than the King-in-Parliament : nor would any court listen to an action under trustee law between an elector and a representative for breach of trust. The

sovereignty of the King-in-Parliament is, as Austin says, legally absolute, but really it is conditioned by the vast number of influences termed political sovereignty.

CHAPTER VI

LIBERTY

1. GENERAL MEANINGS OF LIBERTY

General.—The subject of liberty follows naturally after a discussion on sovereignty. The finality of the various characteristics of sovereignty—absoluteness, universality, indivisibility—may lead to the notion that sovereignty and liberty are mutually exclusive ideas. Far from this being the case, sovereignty and liberty are correlative terms. The sovereignty of the state, instead of being the negation of liberty, is the medium of liberty. Liberty is possible only in an ordered state, a state, that is, where the legal and political aspects of sovereignty coincide, or nearly coincide. The fundamental maxim of liberty is that *law is the condition of liberty.*

Various Meanings of Liberty.—These remarks are true of liberty in a general way, but for an analysis of the idea of liberty we must first separate the various meanings of the term.

Natural Liberty.—Firstly, there is the general, unscientific use of liberty, common in everyday language and in poetry. This aspect of liberty may mean several things. It may mean mere licence, or the desire to do as one likes irrespective of what all others like; or it may mean freedom from the conventions of social intercourse and manners, such as may be achieved by living in distant country districts, or in solitary woods, far from the crowds and manners of towns. Or it may merely mean the freedom of thought as distinct from the slavery of the body : or the desire of the human soul to be free from the body, to be free, as one poet puts it, like the clouds flitting across the sky. Everyone has a vague notion of liberty of some kind and a desire for it, but among ten people using the word, perhaps no two will be able to say exactly what they mean, or, if they do say it, will agree with each

other in their definitions. This general, unscientific use of the word we may call Natural Liberty.

Civil Liberty.—Secondly, it may mean the Rule of Law, that is, the limitation of the powers of government by established law, whether it be in the form of a constitution which contains fundamental principles to guide and limit the government, or, as in England, the fact that law applies equally and impartially to all, to the greatest and humblest alike. This sense of the term may be called Civil Liberty.

Political Liberty.—Thirdly, it may mean constitutional government, that is, a form of government in which the people as a whole have an effective voice. In this sense, what we may call Political Liberty, the phrase "free government" or "free country", means that the country concerned has a representative government, or is a democracy. It means that the people themselves determine how they are to be governed.

National Liberty.—Fourthly, it may mean national independence. In this sense we speak of battles like Thermopylae and Bannockburn deciding the liberty of the Greeks or Scots. A "free" country in this sense means a country which is independent, or simply that it is a sovereign state. In this sense, therefore, sovereignty and freedom mean the same thing. This sense of liberty may be called National Liberty.

2. NATURAL LIBERTY : THE LAW OF NATURE

In connection with the origin of the state, we have already mentioned the idea of liberty in the so-called state of nature, where natural law was supposed to prevail. We must now examine the meaning of natural law in more detail, and in doing so it is essential first to give a short review of its history. The law of Nature has a long and vexed history in both philosophy and jurisprudence. In its most familiar form we have seen it in the theories of Hobbes, Locke, Rousseau and their predecessors of the contractual school of thought. Its actual origin lies further back than history shows ; but from such historical evidence as we possess we can build up a fairly rational account of its earliest stages.

Early History.—To early man all law was divine. In both its origin and sanction early law depended on divine powers, which to unthinking and simple men were beyond the scope

of question. The more inquisitive minds in early days began to reflect on things of the world around, and tried to find reasons for them and causes of their existence. One outstanding fact was obvious—the uniformity of nature. Implicitly or explicitly this uniformity was the basis of all questions and answers. The primaeval reasoner could not fail to recognise that in nature there is much difference amid much similarity and much similarity amid the difference. Among the objects of nature he could make a rough division of animate and inanimate, and amongst the animate he could see distinctly what science has since called genus and species. These varied greatly, but in all the variation there seemed a common principle. A dog differs from a bird, but the stages of life are similar—birth, youth, age and death. Such phenomena to the early reasoner gave indications of something common working in all the animate world, something which was beyond the control of life itself. Not only so, but early thinkers could not help being struck with the distinctive features of their own special type. Man was distinct from other animate life, and, among men, as among the trees and animals, there were many differences co-existing with a principle of unity. Amid the various passions and emotions of man there seemed to exist a sameness. Though one man did not grow up exactly like another, the same weakness of childhood was succeeded by the same strength of manhood and the same decline of old age. In all this clearly there was a principle of growth or of decay, a principle independent of the will of the individual through whom it was manifested. The question as to the first principle or first cause was answered by the general name of Nature.

The Conception of Nature.—This conception of Nature involved two ideas, one, uniformity or rule, the other, power or force, both applicable in a general way to all living beings. These ideas had a special application in the case of man. In the case of man the particular form that nature took was reason. Nature thus came to be looked on as rational, and as operating towards certain definite ends. In other words, nature, instead of being regarded as the material universe, the result of some blind force, was interpreted as an intelligent or rational force. The moral was added to the physical aspect of the universe, and gave a double meaning to the phrase "laws of nature."

In Greek Thought.—In Greek thought the idea of nature varied according to the mental outlook of the users. In the earliest stages of thought the change or flux in material nature was sharply contrasted with the unvarying institutions of human society. In early society, where rigid custom was law, human life seemed to be more stable than the life of external nature. Later, the position was reversed by the ethical philosophers, who came to look on social institutions as far more variable than the external universe. Thus the Phythagoreans, who were primarily physicists and secondarily moral philosophers, applied the idea of nature, the unifying principle of life, to human society with its definite laws and social organisation. The phrase laws of nature came to express in human society what is primarily characteristic of external nature, viz., uniformity. The uniformity in society, however, was gradually shown to be unstable. The acts of individual human agents, such as the law-giver Solon, the foundation of colonies, which made their own laws suitable for their own peculiar circumstances, and the comparative study of political and social institutions—all these showed as much diversity in human institutions as uniformity.

Studied by themselves, customs or laws (and early laws were simply customs) showed the same division of uniformity on the one hand and difference on the other. Thinkers saw that, though there were great variations among the customs and laws of peoples, yet everywhere there were certain phenomena in common. These common elements came to be regarded as the essential laws of mankind. They were everywhere similar ; therefore, it was argued, they must have a common principle. The common principle was nature, and these laws were called natural laws, and as such they were fundamental, prior both in time and in sanction to man-made laws, which varied from community to community.

The Sophists, Plato and Aristotle.—Among the Greek philosophers the distinction was very general. In the Sophists it appeared in the distinction, already noted, of nature, with its permanent institutions, and convention, or artificial man-made institutions. Carrying out this distinction, the Sophists considered that mankind did not embody any of the permanent elements of nature, but that every people legislated for itself according to its own notions. The Cynics, another school of Greek thought, maintained the view of nature later voiced

by Rousseau, as meaning simplicity of life. Human institutions were looked on as artificial, and, as such, opposed to nature, and wrong. The distinction also appears in Plato, who contrasts abstract justice with the written laws of the state ; and in Aristotle, who, in his *Ethics,* divides justice into natural and legal or conventional, and law into common and peculiar.

The Stoics.—It is to the Stoics, however, that we owe the most important presentation of the theory of natural law. To the Stoics natural law was the universal divine law of reason, manifested in both the moral and the material worlds. Man's reason was only a part of the law, but in virtue of this natural element in him—his reason—man could understand the relations of things. Man's reason, therefore, was the instrument through which the law of nature was revealed, and, as the Stoic ideal was to live according to nature, reason was the criterion of what was good or bad. Social institutions were not conventional : they were the results of reason, or what is the same thing, manifestations of the law of nature.

Cicero.—The Stoic theory passed through Cicero into Roman law. The centre of Cicero's teaching is that in every individual there are certain feelings implanted by God or nature ; these feelings are common to everybody. The law of nature to him was the universal consent of mankind. "Universal consent," he said, "is the voice of nature." Universal consent meant the ordinary common-sense opinions of reasonable beings, and in this form the law of nature passed into the field where it had the greatest vogue—Roman law.

Roman Law.—In Roman Law the conception of natural law was encouraged not only by the Stoic theory but by actual historical circumstances. From the earliest period in Roman history, the foreign population in Rome had an important determining power in the course of Roman development. Various causes, such as commercial intercourse and the instability of provincial governments, led to a large number of immigrants coming to Rome every year, and these aliens, or *peregrini,* though they often had very close business and social ties with Rome, were really outside the pale of Roman civil law. At first they had no rights, either private or public, but the Roman courts had to adjudicate on cases in which they were concerned. Such a state of affairs

is unknown in modern times. Modern European communities do not allow such accessions of alien elements as endanger the native population. Further, absorption of alien elements is far quicker nowadays. In ancient times the original citizens, believing themselves knit together by blood ties, did not favour the external usurpation of what was their birthright. In Rome these aliens at first had no law, but when the Romans recognised that their presence, instead of being dangerous, was often beneficial, they made special legal provision for them. They did not share in the Roman civil law, which was a privilege reserved for Roman citizens only. What the Romans did was to select rules of law common to Rome and to the different communities from which the immigrants came. They thus had one law for foreigners and another law for themselves. The law for the foreigners was merely a selection from the laws common to the various communities and Rome. The technical name of these laws was the *ius gentium,* or law common to all nations. This law, selected and codified by Roman lawyers, was quite distinct from the civil law, or *ius civile,* applicable only to Roman citizens. Two elements therefore co-existed in the Roman system : as the Institutes of Justinian express it, " All nations . . . are governed partly by their own particular laws and partly by those laws which are common to all mankind. The law which a people enacts is called the Civil Law of that people, that which natural reason appoints for all mankind is called the Law of Nations, because all nations use it."

Fusion of *ius naturale* and *ius gentium*.—The law for foreigners was promulgated by the Roman praetor, and, as it was the common law of all nations, it was also regarded as the result of natural reason, and called *ius naturale* or natural law. The *ius gentium* and *ius naturale* were thus identified. The *ius gentium* was much looked down on in Rome, as it was applicable not to Romans but to the *peregrini* or foreigners. The pride of the Roman lay in the *ius civile,* or civil law, which was applicable only to those who could boast of Roman citizenship. One might reasonably expect that the more general and apparently fundamental principles of the *ius gentium* would have commanded more respect ; but in Rome the sense of citizenship was so intense that everything non-Roman was only of secondary importance. The

ius gentium really contained legal principles common to every known community. The basis of these principles was simply good faith or common sense in matters of trade and commerce, and, in family matters, normal family affections.

Cause of the Fusion.—The fusion of the law of nature and law of nations was the result of Greek theory being applied in actual practice to Roman conditions. When the Roman lawyers looked about for a philosophical foundation of law, they found the Stoic idea of the law of nature suitable for their purposes. The Stoic idea of brotherhood, too, was helped by historical events. The idea of universal empire had been shown practicable by the conquests of Alexander and the later extension of Roman power. The religions of the east overran the west ; commerce was bringing the various Mediterranean peoples together. Greek and Latin spread to all parts of the world, and became international languages. The universal empire of Rome, in fact, seemed the realisation of the Stoic ideal, and, in legal matters, it was recognised that there must be a law for Roman and non-Roman alike. This law was the *ius gentium,* founded on the natural reason of mankind : in other words, the *ius gentium* was the *ius naturale.*

Gradually it was recognised that the *ius gentium* or *ius naturale* was more important than the *ius civile.* The edict of the Roman praetor who legislated for foreigners thus superseded the *ius civile.* The contrast between the *ius gentium* and *ius civile* helped all the more to fuse the *ius gentium* and *ius naturale.* The strongest element in the fusion, however, was the conception of equity. Equity (which comes from the Latin word *aequus,* meaning fair) conveys the notion of the levelling of differences, and this was essentially what the *ius gentium* did. The old Roman law recognised a multitude of differences between classes of men and property, but this distinction disappeared in the *ius gentium.* The "sense of practical convenience" of the Romans helped in this, for they were always ready to bend formal law to suit individual cases. Equity was fairness, or the common sense application of the law, and thus it had a moral application, though primarily its application was not ethical. The connection between the levelling of the law, and the symmetry of nature on the one side, and the justice of the law of nations on the other, brought about the identification of the one with the other. The identification,

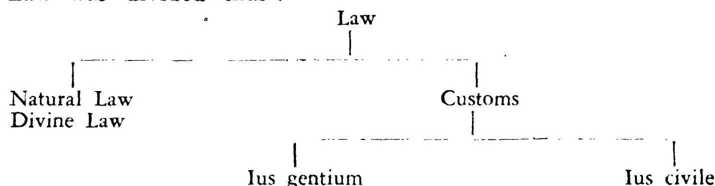
however, was not altogether complete, as in the case of slavery, which was universal and, accordingly, a matter for the *ius gentium,* and philosophy had shown it contrary to nature. Likewise, in the *ius civile* there were statutes ascribed to natural reason. Further, there were elements in the *ius gentium* not universal, which were classed as *ius gentium* because they were certainly not matters of the *ius civile.* Generally speaking the two terms were synonymous, though the jurists use *ius naturale* when they speak of motive, and *ius gentium* when making a practical application to a given case. As Bryce says, the connotation of the two terms is different, while their denotation, save as regards these smaller points, especially slavery, is the same.

Development in Mediaeval Times.—After the decline of the Roman jurists, the idea of natural law was kept alive by the religious and philosophical writers of the middle ages. Passing from law into religion and philosophy, natural law became an ethical ideal or standard. Identified as it was by many leading writers with the law of God, it represented divine justice, according to which princes had to rule, and subjects obey. The earliest traces of modern democracy are to be found in the writers who insist that if the law of God or nature is broken by rulers, then automatically the duty of subjects to obey ceases. Modern civil and religious liberty owes much to natural law as a standard or ethical ideal.

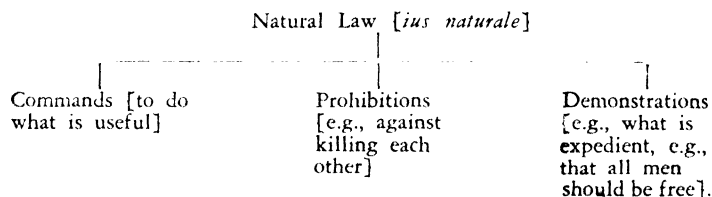
Ulpian.—It is impossible here to do more than mention the chief exponents of mediaeval theories of natural law. The Roman lawyer Ulpian (of the third century) divided law into *ius naturale, ius gentium* and *ius civile,* a tripartite division, which, passing into the Institutes of Justinian, was almost universally accepted by the lawyers and ecclesiastics. The *ius naturale* and *ius gentium,* it will be seen, were separated. The *ius naturale,* according to Ulpian, was the law taught by nature to all living beings. It was not peculiar to man alone. It was equivalent to animal instinct. The *ius gentium* was the law peculiar to men.

The Canonists—Gratian's Division.—The ecclesiastical writers, or canonists, were more uniform in their conception than the lawyers. Though the legal writers wavered from one view to another, the canonists accepted the division of Ulpian, over and above which they held that natural law (as in Gratian,

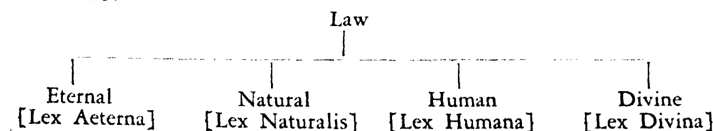
the founder of canon law) was identical with divine law. Law was divided thus :



The canonists rejected the idea of the law of nature as equivalent to animal instincts. Gratian says natural law is the gospel teaching which tells you to do towards others as you would that they should do towards you. Rufinus, a commentator on Gratian, is more explicit : he says natural law may have the meaning of instinct, but it really should be looked on from its human side. It is, he says, a quality implanted by nature, leading men to seek what is good and avoid what is evil. He divides it into three, thus :—



St. Thomas Aquinas.—The canonists thus reject the instinct theory of natural law, replacing it by the idea that natural law is the law of the gospel or of God. The many difficulties arising out of this theory were dismissed in ways we cannot discuss here. We must, however, note the treatment of the question by St. Thomas Aquinas. St. Thomas (who lived in the thirteenth century) represents the culmination of scholastic theory. Half a century after his death political theory became permeated with the questions of church *versus* state, leading to the Reformation in the religious sphere and to revolution in the political. St. Thomas divides law thus:—



St. Thomas defined law in general as an "ordinance of reason for the common welfare, promulgated by him who has the care of a community." Eternal law is the plan of the universe, the basis of the government of all things, pre-existent in the mind of God. It is the law of the author of all things; it is the essence of law, known by "reflexion" to man. Natural law is that part of the eternal reason or law which carries man to his true end. It is summed up in one precept, viz., avoid evil and do good. This precept is fundamental, and is the basis of human law. Human law is based on natural law. It is natural law made known through human reason, and applied to earthly conditions. It is derived from natural law in two ways:—

(*a*) In consequence of the general principle of do good and avoid evil.

(*b*) As a particular application of the general principle (e.g., that so-and-so be punished for a definite act).

Divine law corrects the imperfections of human law and natural law. It is the law which supplements human law, which in itself is insufficient. It is necessary for man's true end, which is beyond nature, and, unlike human law, which is obscure, it is clear, exact, and infallible, affecting the internal part of man, while human law affects only externals. Divine law is the law of revelation, and is divided into (*a*) the old law (of the Old Testament), and (*b*) the new law (of the New Testament).

To St. Thomas the *ius gentium* was part of natural law, the part applying to the relations of men with one another, e.g., in buying and selling. Natural law he conceived of as applying to both men and animals.

Summary of Meanings of Nature.—Lord Bryce (in his *Studies in History and Jurisprudence,* Vol. II, pp. 148-50) enumerates no less than six meanings given to nature by the Roman jurists:—

1. The character and quality of an object, or of a living creature, or of a legal act or conception.

2. The physical system of the universe and the character which it bears. Thus it is said that nature has taken some objects (e.g., the sea and the air) out of the possibility of private ownership.

3. The physical ground of certain relations among men, as in the case of blood relationship, e.g., the rule that persons under the age of puberty should have a guardian.

4. Reason is often denoted by the term nature, e.g., nature prescribes that no one shall profit by harm and injury to another, and that a buyer may make a profit on a re-sale.

5. Good feeling and the general moral sense of mankind. For instance, nature ordains that parents shall be supported by their children, and that certain offences (e.g., adultery) are disgraceful.

6. (In Ulpian), nature means those instincts which the lower animals have in common with man.

Generally speaking, the Roman conception of natural law in practice amounted simply to common sense, or fair dealing between men. In Bryce's words, it may be characterised as "simple and rational as opposed to that which is artificial or arbitrary. It is universal, as opposed to that which is local or national. It is superior to all other laws because it belongs to mankind as mankind, and is the expression of the purpose of the Deity or of the highest reason of men. It is therefore natural, not so much in the sense of belonging to men in their primitive and uncultured condition, but rather as corresponding to and regulating their fullest and most perfect social development in communities, where they have ripened through the teaching of Reason."

The Roman lawyers did not connect the law of nature with the state of nature, so the application of the principles of the *jus naturale* or *jus gentium* was not hindered by the necessity of finding out what actually did exist among primitive communities. Neither did the Romans, as was done later, regard the law of nature as a law apart from positive law, with a sanction distinct from the state; nor did they look on it as an ideal. The practical common-sense of the Romans kept them from these dangers inherent in the conception of natural law.

In the 13th, 14th and 15th Centuries.—From the Roman lawyers and Christian theologians the law passed into modern Europe through the teachers of law and philosophers. During the thirteenth, fourteenth and fifteenth centuries the precision of the old Roman conceptions was lost, for the idea entered the field of philosophical speculation and political

controversy. Like most of the theories of the time, it was used at one time by the church school and at another time by the state school as a final appeal. Not the least important part of its history is the use made of it by the anti-monarchical writers, who argued that, as natural law was above civil law, therefore subjects were justified in resistance to kingly transgressors of natural justice. In this way natural law was a theoretical forerunner of modern democracy.

Modern History.—The modern history of the law of nature culminates in the French Revolution, with the Declaration of the Rights of Man, in 1789. After the Renaissance, thinkers began to seek a basis of law independent of the Bible or inherited authority. The French lawyers for centuries accepted in theory the idea of nature as giving simplicity and uniformity to law. Nevertheless, this idea as implying equality and liberty, just as in Rome, was not applied in practice. It was either a standard of law or an ideal, and till Rousseau's time, it did not become a power in practical politics. The French law, in fact, in spite of the passionate love of the simplicity of the law of nature shown by the French lawyers, remained very heterogeneous. Nor did the centralised power of the monarchy bring uniformity into the legal system.

The State of Nature.—The idea of the state of nature was common from the sixteenth to the eighteenth centuries. The history of the state of nature we have already given in outline in connection with the Social Contract theory. Locke in particular drew attention to the connection between natural law and freedom. In 1776 the idea was embodied in the American Declaration of Independence, in which the equality and freedom of men are postulated. These ideas, going to America from Europe, returned with renewed vigour to France, and provided the theoretical basis for the French Revolution. Rousseau's ideal was the state of nature. Everything inconsistent with the state of nature was wrong. The state of nature was his political criterion or standard. In the state of nature, all men were born equal. This idea was current also in Roman law, but the Roman lawyers applied it only in the sense that wherever Roman law applied, the Roman courts made no difference between men. In the French Revolution it was applied to all. Where the Roman lawyers had said that men were equal, the French said men ought to be equal. The notion of equality thus became a catchword for revolu-

tionaries. What in Rome was a basis of right was made in France the cause of a terrible wrong. Passing from the cold realm of law to the heated area of political controversy, nature became the gospel of dreamers and agitators, and shook the civilised world to its foundations. It ultimately died away as the result of the experience of anarchy in practical, and of the historical spirit in theoretical politics.

In modern law, the idea of nature operates or has operated, in three distinct ways :—

1. **Equity.**—Equity in English law is equivalent to the Roman application of common sense or fair dealing in cases where no direct law governed the issue. Though the law of nature or the *ius gentium* is not specifically mentioned by English jurists as the basis of equity decisions, the ideas are Roman, taken from either Roman law or canon law. The older English judges referred rather to the law of God or the law of reason. Excellent examples of the modern law of nature are to be found in India, where, under the peculiar circumstances of the legal systems prevailing with the advent of the English, many cases were not covered by positive law. Thus from the East India Company's earliest days, directions have been given to rulers to apply the principles of " justice, equity and good conscience "—in other words, the Roman law of nature or of nations. Bryce quotes the order of the Indian Civil Procedure Code of 1882, which lays down that a foreign judgment is not operative as a bar if, in the opinion of the court which deals with the question, it is " contrary to natural justice ".

2. **International Law.**—Natural law and International law. The Roman equivalent to our modern international law was *ius feciale.* The foundations of our international law are the *ius naturale* and *ius gentium.* International law is based on two things—first, the customs which have grown up among peoples in their commercial dealings with each other, and, second, the doctrines of legal writers, such as Grotius. The legal writers found in the law of nature the permanent basis of all international relations. The law of nature and the *ius gentium,* or law of nations, to them were practically synonymous. The *ius gentium* of the Romans was really a part of Roman law applicable in the Roman courts, but in origin it was " international ", and the phrase " law of nature and of nations " in the writers of the sixteenth to the eighteenth

centuries came definitely to mean what we now know as international law.

3. **In Philosophy of Law.**—In the philosophy of law, natural law (or, in German, *Naturrecht*) has in recent years been used as the metaphysical basis of legal ideas and doctrines. This has been peculiarly the case in German writers, such as Röder, Ahrens, Stahl, and Trendlenburgh.

Other Effects of the Idea of Nature 1. In Literature and Art.—Some other effects of the idea of nature may also be noted. 1. The idea of nature in literature and art. The influence of Rousseau was not confined to politics. He attacked not only political but also literary and artistic forms. The classicism of the seventeenth and eighteenth century writers was marked by artificiality and mannerisms, and the return to nature in literature was a return from stilted language and subjects to the description of natural scenery, country and family life, in the simple language of the household. This is known as the Romantic movement in literature, the English leaders of which were Wordsworth, Coleridge, Byron, Scott, Shelley and Keats. These writers also were supporters of the new ideals of political or civil liberty current at the time of the French Revolution.

2. **In Theology.**—The idea of nature in theology, giving us what is known as Natural Theology, which is based not on revelation, but on reason.

3. **In Economics.**—In Economics, the idea of natural liberty was a theoretical basis for the doctrine of *laissez-faire*, or complete freedom from government interference in industry and commerce. The assumption in this case is that things will *naturally* work out for the best benefit of man if government does not interfere.

4. **In Natural Science.**—The idea of nature in natural science. The laws of cause and effect in the physical and biological worlds have been used with great influence as analogies for the social world. The most notable modern writer of this school is Herbert Spencer.

3. NATURAL RIGHTS. THE MEANING OF RIGHTS

From the above short history of natural law, the influence of the idea of nature in human society will be clear. The consequences of the idea have been so great, both in theory and in history, that we must examine the notion in detail.

Nature and Convention.—The earliest noteworthy distinction is that which existed between nature and convention. The natural life in this sense is the simple or primitive life; the non-natural or conventional is the life of society with its manners, customs and institutions. In its widest meaning nature includes everything that exists. Man, therefore, is a part of nature, and his institutions are natural. To say that what is natural is right and what is non-natural is wrong, does not apply accordingly to the social "conventions." We might substitute for the meanings of nature and non-natural in this sense the words normal and abnormal. What is *abnormal* is not *wrong*.

Natural Law as a Rule of Conduct.—Natural law, in fact, cannot give an absolute rule of conduct. Where it is regarded as the equivalent of the divine law or the revealed will of God, it might be held that natural law is an absolute law, insomuch as it is the will of the Absolute or God. This, however, raises the two-fold difficulty of revelation, and of civil society as distinct from religious society. Natural law, like divine law, however eternal the latter may be, or in whatever way it may be revealed, must be interpreted through human agency. Human reason ultimately is the deciding factor. Natural law interpreted in this light thus becomes the law of human reason. Kant, who accepts the Social Contract theory not as an historical explanation of the origin of society, but as a standard of justice, regards the law of nature as the equivalent of the law of reason (or, in Kant's language, the categorical imperative of practical reason). Unlike St. Thomas Aquinas, he considers that human reason itself is the law-giving authority.

Natural Law as an Ideal.—Natural law, again, without a definite authority to enforce it, can only be an ideal, which people may or may not obey as their conscience directs. Natural law is often used in the sense of law as it ought to be, or perfect law, as distinguished from imperfect human law. In this sense it might be useful as an aim to human aspirations, or a standard of human law, if, indeed, it could be universally promulgated for purposes of comparison. Otherwise it is a distinct danger to the state. The state is a human institution, organised in government through human agency, and to set the rule of natural law against the rule of

the law of the state is to introduce a dual sovereignty, and therefore, a dual state, which is inconsistent with the notions of both sovereignty and state.

Influence of Natural Law.—Though natural law and natural rights are now very generally dismissed from the sciences of both morals and the state, they had a very considerable influence on certain types of political thought of the last century. The particular school, the thought of which is based on ideas of natural right, is known as the individualist school, of which John Stuart Mill and Herbert Spencer are the most noted exponents. For a more detailed analysis of the ideas of that school, the student must refer to the chapters on the End of the State and the Functions of Government. At this stage, our purpose is to analyse the meaning of rights, an analysis to which the above notes on natural law will be helpful.

Meaning of Rights.—*Rights* must be distinguished from *powers.* Nature gives every normal man certain powers. These powers are simply the brute force or instincts with which every one is endowed at birth, just as animals are. Rights arise from the fact that man is a social being. He exists in society along with other men who are more or less similar to himself. Each one in society is endowed with powers, but rights arise from the consciousness on the part of each individual that every other individual has similar powers, and that it is in the common interest that every one should be able to exercise his powers. For the existence of a right, therefore, there must be (*a*) a power, and (*b*) a recognition of the exercise of that power as necessary for the common welfare by others having similar powers. These two elements form the raw material of rights; for the full confirmation of a right there must be a third element—the claim to the recognition of the power by everyone possessing the power.

How Rights Arise.—Rights arise from the moral nature of man. Rights are powers of free action, and every individual must from his very nature have certain powers of free action. The elementary needs of life, not to speak of the higher needs of social life, demand movement, work, speech, etc. To fulfil one's needs as a man, one must thus have certain powers of free action; still more is such action necessary to fulfil one's nature as a social being. Every individual exists in society. As a moral agent each one is capable of acting

according to a certain conception of what is good for him, or, as we may call it, a moral ideal. The rights of the individual are the conditions under which he is able to realise this ideal. The ideal is shared by other moral agents in society, and the claim of one individual to realise his ideal must be recognised by others. Everyone is conscious that not only has he certain powers of development according to an ideal conception of his own good, but that he possesses these powers in common with other individuals who likewise have a conception of a good or ideal towards the reaching of which they have certain powers. Rights arise therefore from individuals as members of society, and from the recognition that, for society, there is an ultimate good which may be reached by the development of the powers inherent in every individual. The consciousness of the common interest turns *powers* into *rights*; and the only proper sense in which we can speak of natural right is as rights necessary to the ethical development of man as man.

Rights and Duties.—Another way of saying this is that rights imply obligations, or that rights imply duties. In society the acts of individuals are limited by the interests of other individuals. If one individual wishes to act in a certain way, he must concede the same power of action to his neighbours. The state exists to maintain and co-ordinate the various claims of individuals, so that the fundamental duty of every individual is obedience to the state as organised in government. The state represents the collective interests of the community. Its interests are therefore superior to the interests of any individual, for were there no state there would be no rights, but only powers, or brute force. The commands of the state, or laws, are the conditions of rights, and these rights involve the duties of obedience, allegiance and support, both moral, such as by public service, and material, such as by paying taxes.

Function of the State.—The state, founded on the intelligences and wills of individuals composing it, must maintain and co-ordinate the rights of its citizens. This it does through its system of law, and behind its law is the supremacy of the state, the supremacy that actually arises out of the very rights the state exists to maintain. The state provides the permanent power whereby its citizens can live moral lives. The powers or forces of individuals become rights when mutually recognised, and the state gives the conditions where-

by the conception of a common good can be worked out by each individual in his own life along with his fellows.

The Formulation of Rights.—When these rights are formulated, they are upheld by the power of the state. It is in the formulation of rights that the state shows itself most necessary. Obviously, where there is a large number of individuals, each with his separate claims, it is necessary to define claims. In many cases both rights and obligations are vague. Thus, in matters of property, contract, and family relations, some general principles may seem obvious, but the applications of these principles to individual cases may raise difficulties. In the case of a child reaching his or her majority, or in the case of the making of wills, many possible ways of deciding might be given, but the law must decide which method it will accept. Not only is there the necessity for the formulation of law; there must also be interpreters of disputes. No law is so clear or comprehensive that it can cover every possible case. Disputes, or cases not contemplated in the law, must arise, and interpretation and decision are necessary. Interpretation and decision require judges, who also must decide cases which are not met by existing laws by what is known as the principles of equity. The law must also declare the penalties which will follow illegal actions; these penalties are decided according to the danger to the state involved in breaking the law. The law also must be known, i.e., it must be published, and definite.

4. RIGHTS AGAINST THE STATE

Rights against the State.—There are no rights of nature unless nature be understood in the sense indicated. Rights arise from the nature of man, it is true, but the proper interpretation of that nature gives a very different result from that given by the upholders of the so-called state of nature. The "natural rights" of these "men of the nature" are their natural powers or brute force, which are limited only by the brute force of others, or by the "natural" limits of mere muscular power or cunning.

The Relation of the Individual and State.—No moral development is possible in such a condition for the reason that such individuals are not moral agents. Rights arise from the existence of moral agents in the moral medium of society, and as such, rights imply duties. There is no absolute right in

any man : absolute right to do or choose as one likes is an attribute not of man but of the Absolute, or God.

No Rights against the State.—The state exists to maintain and co-ordinate the rights arising among men, and, as such, is a necessary element in the moral perfection of mankind. The question frequently occurs—both in theory and practice—whether the individual has any rights against the state. From the above discussion on the meaning of rights the answer to this question is clear. The individual has no rights against the state. To have rights against the state is tantamount to saying that the individual has no rights at all. If there is no state there are no rights, but only powers. The state is essential to the existence of rights among mankind. In a perfect society with everyone sufficiently moralised to know his own good, the state would be unnecessary : in other words, the state is necessary because our moral destiny is not reached. Men are weak and erring, and till they have ceased to be so, the state will be essential.

Rights against Particular Forms of Government.—To say there are no rights against the state, however, does not mean that the individual has no rights against a particular form of government. A government may so far defeat its object as the organisation of the state, which exists for the moral good of man, that, to fulfil their moral destiny, the citizens of the state may have to change the form of government. Thus where the form of government is a despotism, giving no security of person or property, obviously individuals cannot live a proper moral life. Where, to favour a few, a government reduces the majority of citizens to moral inanition, the citizens have a right on moral grounds to change the government. The form of government can be altered in the interests of the state.

This Right in Modern Democracy.—In modern representative government to change the form of government is not difficult. The opportunity for the exercise of their own power is given to the people. They possess the political sovereignty which is the condition of the legal sovereignty. The right to change the form of government thus rests with themselves. The right to change the form of government is to be distinguished from any so-called right of revolution. Theoretically the right to change the form of government and the right of revolution are merely different degrees of the same thing, but revolution is not justifiable even as an extreme measure, in-

somuch as revolution as a rule brings about greater evils than it suppresses. Revolution usually means general anarchy and a disappearance for a time of all conditions of the normal moral life. The example of Russia shows how revolution, however just the causes, may lead to a complete loss of freedom, save the "freedom" of force. The evils of the Russian revolution were far greater than the evils of the previous autocratic rule. So-called bloodless revolutions, or as the French call them, *coups d'état* are merely sudden radical changes in the form of government; the citizens are not deprived of the rights on which their lives as individuals are based.)

Right of Resistance.—Similar arguments apply to the right of resistance. In modern representative governments laws are made by majorities, and minorities must concur. Minorities have no right of unlawful resistance to a law which they dislike. A minority has always the right to make itself a majority, i.e., to make its own point of view so persuasive that the majority will support it. A law remains a law till it is repealed by the ordinary law-making process, and if the law is irksome to many individuals, they must first persuade others of the justice of their case to give them the majority necessary to repeal the law. A law sometimes dies out without formal repeal. The necessity for its existence may have passed, or its existence may be so unpalatable to the common consciousness that either the government will not enforce it or the law will be allowed to lapse. Every government must enforce laws vital to rights and the common good.

CHAPTER VII

LIBERTY—(*continued*)

5. CIVIL LIBERTY

What Civil Liberty Means.—The nature of rights has been explained, therefore we are now in a position to appreciate the meaning of Civil Liberty. Civil liberty arises from the state. The state is organised in government, which lays down laws, executes them, and, through the judiciary, interprets

them in disputed cases. The powers of government are determined by the state, so that the sovereignty of the state is the guarantee of individual liberty against the government. Government exercises its powers only to the extent and in the way allowed by the sovereign community. The sovereignty of the state is expressed in its laws, and in every state there are two types of law :—

1. Public law
2. Private law

which guarantee the individual respectively

1. Against the government ;
2. Against other individuals, or associations of individuals.

Public law guarantees the individual against governmental interference ; private law guarantees him against other individuals or associations of individuals. In subsequent chapters more will be said about these types of law. Here it is necessary to observe that the methods whereby states guarantee individuals against government vary considerably. In every state there is a body of fundamental principles which regulates the conduct of government. These principles, sometimes written, sometimes unwritten, are called the constitution. Where a constitution is definitely written, as in the case of the United States, the general principles of government, an outline of its organisation and a definite number of general guarantees of individual liberty are given. Where, as in the United Kingdom, the constitution is unwritten, traditions, customs and laws prescribe the form of government and the guarantees of individual liberty.

The State and Government.—Such constitutional guarantees are characteristic of modern democratic states. In states where the distinction between the state and government was, or is not clear, naturally there is no guarantee on the part of the state against government. Thus in a despotism, where the only will is the will of the despot, there can be no individual freedom save for the individual despot. The same is true of theocracy, where the interpreter of the will of God is supreme. Freedom in such cases means freedom to do what the despot allows. The same is true of the feudal and absolute governments of the mediaeval and early modern ages. In modern democracies, however, we find that the will of the community continually checks the government. In most countries that will is

pressed in the constitution, and the government cannot go beyond the constitution without breaking the law. Thus in the United States, the legislature, Congress, must work within prescribed limits ; and the government was so organised at the beginning as to give the least chance of despotism. The legislature, the executive and the judiciary were organised separately to ensure that the lawmaker should not carry out his own laws or interpret them in cases of dispute. In England the opposite is the case. The legislature is supreme : it can make or unmake any law it pleases, but behind its acts lies the will of the people, which, expressed in its various ways—at elections, in the press, on the platform—makes the conditions under which the legislature exercises its powers.

Modern Constitutional Government.—It must be remembered that constitutional governments are relatively new. In origin their powers were sometimes elaborately circumscribed to prevent despotism. Experience has proved that the theoretical limitation of governmental powers is neither the sole nor the chief guarantee of individual liberty. Naturally enough constitutional government, coming after centuries of despotism and after bitter struggles with despotism and class privilege, guarded itself as carefully as possible, but these guarantees have sometimes been broken to serve the very ends for which they were established, and countries with no elaborate guarantees have possessed as much freedom as others. Thus in the United States there is no more freedom than in the United Kingdom. The key to British liberty is not a constitution or the separation of powers, but the rule of law, whereby every citizen of the country, of whatever degree, is amenable to the same process of law as his neighbour. On the continent of Europe, on the other hand, there is the system of administrative law, by which officials are subject not to ordinary law courts, but to special administrative courts. Reference will be made to this later.

6. PARTICULAR RIGHTS

Types of Particular Rights.—In modern civilised governments there is a tendency to regard certain rights as fundamental. There is much difference of opinion among thinkers concerning the extent of those rights, and considerable variation among governments as to the method of their

guarantee. Taking a general survey of both political thought and practice, we may sum up these rights thus :—

1. Right of life and liberty.
2. Right of property.
3. Right of contract.
4. Right of free speech, reputation, discussion and public meeting.
5. Right of worship and conscience.
6. Right of association.
7. Right of family life.

A detailed analysis of each of these is impossible here. On each, however, a few words must be given.

1. **The Right of Life,** or as it is frequently called the *Right of life and liberty.* As we have seen, rights arise from the nature of man in society. Obviously all rights depend on life, for without life man can exercise no rights at all. Fundamental among rights, therefore, is the right to life. This right includes not only the right to live but the right to defend one's self against attack. Every state, however primitive its organisation, provides for personal safety. In early societies the power to avenge or punish was in the hands of blood relations ; this led to what is known as blood-feuds. In modern highly organised communities the right to life is safeguarded by the law, and by the government through the police and courts.

Capital Punishment.—Murder is heavily punished, though the notions of punishment vary from state to state. The idea of capital punishment, i.e., a life for a life, originates partly from the human desire for revenge and partly from the necessity of ridding society of one who is dangerous to it. Modern ideas of punishment tend towards the recognition of the right to life. Instead of a murderer being hanged, modern penal law tends to regard him as one who must be removed from society for some time, in order that he may reform and ultimately resume his place in society to contribute towards the welfare of society like all well-behaved citizens.

Suicide.—The right to life, based as it is in the common welfare of society, not only necessitates the prevention of murder, but demands the punishment of those who try to commit suicide. From the point of view of the general welfare, every life is valuable, and to murder another or murder oneself means the elimination of an individuality which has

duties as well as rights. One cannot claim security to one's person from encroachment by others if one is allowed to kill oneself by one's own free act. Suicide, therefore, is an injury to society, and those who attempt it are punished.

Self-defence.—The right to life also involves the right to self-defence. For self-preservation force may rightly be used even if that force may kill others. Force of this kind may only be used as an extreme measure where no other means will suffice. In English law the only justification for the use of extreme force is self-defence, which does not imply the right of attacking. The interpretation of what measure of force it is necessary to exercise for self-defence remains with the courts, which are guided in their judgments by the right to defend one's life on the one hand, and the existence of private blood-feuds on the other.

Personal Freedom.—The right to life involves also the right to a certain amount of personal freedom—such as freedom of movement, of right to the exercise of one's faculties and of determining the general conditions of one's life. Mere life without movement would be meaningless and without the exercise of the human faculties it would not rise above the level of that of animals. The right to freedom arises from the fact that there is a society to the general good of which each individual can contribute something and have a conception of what that good is. Thus slavery is universally condemned because the good of society demands that each man must be able to determine the conditions of his own life. In cases where such determination is not possible, e.g., idiots or lunatics, the right to life is still respected on the ground that either the individual is curable and capable of later self-determination or that the very fact of their continued existence performs a social function, by calling forth family or philanthropic feelings.

This Right not Absolute.—But the right to life and liberty, though fundamental, is not absolute. Thus in war the individual life is sacrificed. Many wars, it is true, have sacrificed individual life because of the personal vanity of rulers; the right to life was thus infringed. But wars such as the Great War, 1914-18, where two moral ideals were at stake, involve the sacrifice of life as a condition of the realisation of that ideal. Green, the great modern English ethical and political philosopher, condemns all wars on the

ground that they are emblems of human imperfection. War is only necessary because states do not really fulfil their functions as such in maintaining rights among individuals. Armies are due to the fact that states do not live up to their purpose, therefore no state is *absolutely* justified in traversing the right to life, though in particular instances states may be justified in going to war because of the good which may result. The right to life or liberty, again, may be suspended where the laws are broken. As laws, properly understood, exist to maintain a system of rights, obviously if they are broken, action must be taken to preserve the system. Both life and liberty therefore depend on obedience to the laws. Thus in the case of murder or treason, the murderer or traitor may be deprived of his life, and in the case of stealing and violence the offender must be restrained. On the other hand, if the right to life and liberty is to mean anything, there must be safeguards against arbitrary action on the part of the government. In France before the Revolution there was a system known as *lettres de cachet,* by which the administration was able without judicial process summarily to deprive any individual of his liberty. These *lettres de cachet* were issued under the privy seal (*cachet*) and the individual had no legal process to secure either redress or freedom.

Individual Liberty in England.—In the English system the maximum amount of individual liberty is secured in a very simple way. There is in England no definite constitutional guarantee of liberty, such as is given in some modern written constitutions. In England personal liberty is guaranteed simply by the courts of law. The existence of constitutional declarations of the liberty of the individual are of no avail without machinery to guarantee it. In England the right of personal freedom means the right not to be imprisoned, arrested or coerced in any manner which is not justified by the law. Physical restraint in England is wrong, unless the individual is accused of an offence and is to be brought to trial in the courts, or when, after trial, he is convicted and has to be punished. The two ways in which this principle is upheld are :—

1. Redress for arrest, and
2. The Habeas Corpus Acts.

1. Redress for arrest means that a person who has been

wrongly arrested can either have the wrong-doer punished, or exact damages in proportion to his injuries. Such action may be taken against any person in the realm, official or non-official.

2. The Habeas Corpus Acts. A habeas corpus writ is an order issued by the courts calling upon a person, by whom a prisoner is alleged to be kept in restraint, to produce the prisoner (or *produce his body*—the English equivalent of the Latin *habeas corpus*) before the court, and explain why the prisoner is kept under restraint, in order that his case may be dealt with by the court. The prisoner may then be set free or brought to proper trial. By this means the individual is saved from any arbitrary act on the part of the executive government, or, in other words, the executive government must act strictly according to the law, otherwise the courts will interfere, on the application either of the prisoner or of some person acting on his behalf.

The Rule of Law.—The rule of law in England thus secures the minimum amount of personal restraint. In times of emergency, such as wars or threatened revolution, special measures may have to be taken for the safety of the state—such as the Defence of the Realm Act during the Great War. In such cases for public reasons it is necessary to give the executive more arbitrary powers; but in times of peace the rule of law is paramount.

2. **The Right to Property.**—The right to property has an ethical basis, and the political safeguards of property are really expressions of the ethical end. The ethical basis of property is that property is essential for the realisation of the moral end of man. The word property comes originally from the Latin word *proprius,* which means own or peculiar, and *proprietas,* a peculiar or essential quality, arising from that ownership. The ethical quality of property is that it is essential in some form to the existence of man.

The many controversial questions regarding the origin, distribution and ownership of property cannot be discussed here. The question of individual as against public ownership will be discussed in a later chapter. The ideas on property change from age to age, and with the change of ideas there goes change in laws. At present the laws of nearly all states give definite guarantees to private property, but the view as to what may be private property varies from place to

place. While private property in land, rivers, moors, and such like is respected in some countries, in others the tendency is to regard such as public property. However much the views may vary, it may safely be said that there is a certain amount of private property which, whatever may be the type of state, will be guaranteed—such as houses, clothes, cooking materials, food, and books.

No Absolute Right.—Property, like liberty, contains no absolute right in itself. At any time the claims of the state may be so paramount, e.g., in war—that the usual property rights may be temporarily suspended. So it is also with confiscation of property. Property may be confiscated either as a punishment or for reasons of state. The whole question of taxation is also connected with property. It depends on the particular views prevailing in a community at any period whether any given type of property shall be taxed, or taxed more heavily than any other type. Thus speculation in buying and selling land near rising towns may be checked by a tax on unearned increment, or increase in values caused not by the investor's exertions but by the growth of the community. "Vested" interests, again, are often said to confer certain property rights on individuals. Vested interests arise from length of tenure, and it is held that the individual has a "right" to expect the continuance of the conditions under which he bought or developed his property. Such an idea rests on a wrong idea of the state. The state cannot allow any interests to continue if these interests defeat the object of the state's existence. No government can bind its successors for ever to a certain line of action. The change of circumstances in time may completely alter the meaning of a certain type of property or investment. The common welfare, not individual interests, is the main concern of the state.

3. **The Right of Contract.**—The right of contract is really a phase of the more general right of property. If one has certain rights of property, then reasonably enough one may have rights to dispose of or use that property as one desires. The phrase "freedom of contract," however, like the right of property, is variously interpreted by governments. Thus in America the constitution prohibits interference with contracts by the states, but in Britain there is a tendency to interfere with the so-called freedom of contract. The doctrine of

laissez-faire demands that no restrictions, or as few restrictions as possible, shall be placed on the "natural" movements in commerce and in industry, but though that doctrine prevailed for many years, experience showed that many interferences were necessary in the freedom of contract. Thus there are Factory Acts, Employers' Liability Acts, Insurance Acts, etc.

Meaning of Contract.—A contract is a transaction in which two or more persons, or bodies of persons, freely impose certain obligations upon each other to act in a certain way with regard to some definite object. A simple kind of contract is the buying and selling of an article. Once the article is bought or sold, the contract ends. The ordinary type of contract, however, is more complex. It places two parties under certain obligations for the future : it is an act of will which imposes a certain restraint on each party for the future, and it might reasonably be supposed that each party could break the contract at will. Once a contract is made the parties can annul it only if both parties agree. One party cannot break it if the other does not wish to. The basis of contract is really truth and honesty. If one party fails to keep his word then he deceives the other party and may cause him material loss, which is equivalent to the theft of his goods.

Importance of Contract.—Contract is an essential basis of society. In primitive forms of social organisation contract is of a simple kind ; whereas in modern society, where there is much differentiation of functions, contract is the basis of business and of social organization. Where there is no security of contract there can be no business more than mere barter. Contract, therefore, may be said to be essential to the progress of civilization, and if the state is to fulfil its function, it must have the support of the state.

The State and Contracts.—The State must maintain and adjust the rights and obligations arising out of contracts, but certain contracts cannot be recognised by the state. Contracts made for illegal purposes, immoral contracts, or contracts endangering the safety of the state are necessarily invalid. The state could not support a contract made to deal in slaves, or a contract involving bribes. Gaming and betting contracts are ranked in most countries in the same class. The state can support contracts only which are consistent with the end for which the state exists.

4. **The Right to Free Speech.**—This right arises from the nature of man, for speech is necessary for social union. This so-called right of free speech is much misunderstood. It does not mean the right to say anything one likes where one likes ; it simply means the right to speak (and write) so far as is consistent with the general well-being. As the general well-being is inextricably connected with the state, freedom of speech must be limited by considerations of the stability of the state. Thus a speaker or writer may give his views on the policy of government, but he must not stir up violence or revolution. Truth alone is no index for freedom of speech. Thus a citizen may wish to tell the evil character of a neighbour or enemy to the public, but unless the speaker can prove that his remarks were made in the public interest, however true the remarks may be, he will be punished under the law of slander or libel.

The Right of Reputation.—The right of free speech is thus limited by the right of reputation. In social life an individual's good name is of the utmost value to him, not only because of the normal human sense of honour but in his business and political relations. If an individual insults another individual, and is insulted, the injury to the attacker's feelings must be taken into account. Where such an insult is private, i.e., takes place between two individuals, it may lead to blows or assault, and the law courts. Where it is public, it is subject to the law of libel.

President Woolsey's Six Principles.—President Woolsey gives the following six principles which cover the various phases of the right of reputation :—

"Here then we have the rights of speech and the statement of truth on the one hand, personal feelings and reputation on the other. The principles reconciling the two rights seem to be these : (1) To tell the truth, to disclose the truth when the character of a man ought to be known, to do this publicly when he is talked of for a public office, may be entirely justifiable. (2) To put the principles or conduct of a person in a ridiculous light by word or caricature, when he is thus before the public, is equally defensible. (3) It is reasonable, therefore, that the truth in a statement, even if uncalled for, should take off something of its libellous character, unless especial malice in bringing to light that which was not known, and was not necessary to be made public for the pur-

poses of truth, can be alleged in the case. (4) In all cases, then, the malice and the causelessness of the injury to a man's name are important considerations, nor can party any more than petty professional or other jealousies, excuse libels. (5) Ridicule, equally with sober statements, may violate rights, when it is malicious or causeless, whether there is reason for it or not. (6) The revelation of former faults or misdeeds (without good cause), of persons who have long led an upright life, is a wrong demanding redress."

Freedom of Speech etc. in Modern States.—The modern use of the phrases "freedom of thought" and "freedom of speech" comes from the times of the French Revolution. Originally the ideas came from England. In the Declaration of the Rights of Man it is laid down that the "free communication of thoughts and opinions is one of the most precious rights of man; each citizen therefore should be able to speak, write, and print freely, subject to the responsibility for breaking this liberty in cases determined by the law. The constitution gaurantees as a natural and civil right to each man to speak, write, print and publish his thoughts without these writings being submitted to any censorship before publication." The Belgian constitution lays down similar principles, particularly regarding the freedom of the press. In England no constitutional provisions such as these exist. English law recognises no principle of the freedom of discussion. The only security for freedom of speech in England is that no one shall be punished except for statements spoken or published which definitely break the existing law. The position is given in these words in Odgers' work on libel and slander:—

"Our present law permits any one to say, write, and publish what he pleases; but if he make a bad use of this liberty, he must be punished. If he unjustly attack an individual, the person defamed may sue for damages, if, on the other hand, the words be written or printed, or if treason or immorality be thereby inculcated, the offender can be tried for the misdemeanour either by information or indictment."

Libel.—In England there is thus no theoretical freedom of speech or freedom of the press; the only freedom that exists is freedom within the law. If anyone libels another, he may be convicted under the law of libel. The same is true with regard to libels on government. "Every person," says

the well-known English writer, Dr. Dicey, "commits a misdemeanour who publishes (verbally or otherwise) any words or any document with a seditious intention." And again, to quote the same authority, a "seditious intention" means "an intention to bring into hatred or contempt or to excite disaffection against the king or the government and constitution of the United Kingdom as by law established, or either House of Parliament, or the administration of justice, or to excite British subjects to attempt otherwise than by lawful means the alteration of any matter in church or state by law established, or to promote feelings of ill-will and hostility between different classes."

The law only recognises as legitimate the publication of statements which may show the government to have been misled, or to have committed errors, or statements which point out defects in the existing system which can be remedied by legal means. In other words, the law sanctions only criticism which is *bona fide,* and intended to bring about reform in a legal way.

Blasphemy.—The same general position holds with regard to discussion on religious and moral questions, which are governed by the same laws and the law of blasphemy. All cases arising under these laws are judged by the ordinary procedure of a judge and jury, so that the particular amount of immorality or religious danger in an act under judgment will be adjudged largely according to the current ideas of their danger to the public life of the country.

The Freedom of the Press.—The freedom of the press in England, though not guaranteed by any constitutional maxim, is guaranteed by the rule of law. No licence is necessary for a publication : the persons responsible may be punished, not for publishing, but for publishing anything which breaks the law. The same principle makes it unnecessary to give caution money or a deposit before publication. As Dicey says, in England men are to be interfered with or punished, not because they may or will break the law, but because they have committed some definite assignable legal offence. Except in the case of plays (survival of the old licensing system) no licence to print or publish is necessary either for books or newspapers, and most newspapers in England are definitely political. Nor has government or anyone else the right to seize or destroy the stock of a publisher because it may contain what

in the opinion of government is seditious matter ; nor can government supervise the editing or printing of a paper.

Press offences are tried in the ordinary courts by a judge and jury. With the jury, as in all cases of libel, lies the decision as to whether the press exceeds the law or not. It is to be noted that in France not only is there a large body of special press law, but that certain press offences are tried by special tribunals. In France the idea has for centuries prevailed that it is not merely the concern of the government to punish breakers of press law, but it is also their duty to guide opinion in the proper channels. In England, before 1695, there were numerous restrictions on the press and printing, including the monopoly of the Stationery Company, the Licensing Acts, which lapsed in 1695, and the special tribunal known as the Star Chamber, which with its other functions also controlled printing presses. Since 1695 the theory has prevailed that government has nothing to do with the moulding of opinion : its main concern is to see that the law is observed.

Public Meeting.—Another right, the right to public meeting, which is part of the right of free speech, is governed in England by the same principles. Any one in England can meet and discuss any question in any way provided the meeting obeys the law. If what is said be libellous, the law of libel will come into operation ; if blasphemous, the law of blasphemy ; if the object of the meeting is unlawful, the meeting is unlawful assembly. If a breach of the peace is likely to be committed or is committed, the meeting is unlawful and those responsible are liable to be punished.

5. **The Right of Worship and Conscience.**—The right to one's religious faith is not universally admitted. In some states only a certain type of religious faith is permitted ; in others there is general toleration. Modern history teems with instances of wars on religious grounds, either because of a fundamental difference in religion or because of quarrels between sects of the same religion. In the modern world the tendency is towards toleration in all religions within certain limits. Thus in the United Kingdom, though there are state churches, dissenting churches are allowed to practise their faiths freely. During the nineteenth century the chief political disabilities were removed from Roman Catholic Christians and Jews. Only in a very few instances do civil or political

disabilities exist. In newer countries, including the British Dominions, there is no state church. Complete toleration is allowed to all religious faiths or sects. In India the government is neutral regarding religious matters.

Church and State.—Since the Reformation the church and state have gradually drawn apart ; the church has given up its previous temporal powers and confined itself to spiritual matters. In certain states a species of autocratic rule still prevails, e.g., in Islamic states ; but even in Muhammadanism the modern trend towards universal toleration is making itself felt. Modern opinion leaves matters of heresy to the church, and only if the church exceeded what the common consciousness regarded as just or reasonable would any action of government be likely.

Limitation of Right of Worship.—Generally speaking, the right to one's faith is limited by two things. First, where the worship involves immorality, the power of the state may intervene. An example is the system of worship of the Thugs. Secondly, where the religious authorities so act as to endanger the state, the state must then safeguard its own existence. A religious body, for example, to further its faith might try to raise civil war or invite a foreign power to help it. In such a case the state would have to intervene to save itself.

It is difficult to say that in any state there is a right to worship as such. People as a rule may hold what opinions they choose provided illegal acts do not flow from these opinions. Thus in England though there exist the law of blasphemy and laws to uphold the Christian religion, the laws are operative only in cases where they are blatantly set at defiance.

The Right of Conscience.—Regarding the general rights of conscience it is often held that conscience, being the chief possession of man, is inviolable. In a sense it is inviolable. The state through government can compel a man to do what his conscience tells him is wrong, but the state thereby does not affect the conscience. The conscience as the inner unspoken voice can preserve itself in spite of the state or government, but what it cannot do is to prevent the state acting towards the possessor of the conscience in any way the state thinks fit. Thus, though the state cannot make a man's conscience say that which it thinks wrong is right, it can imprison

him, or force him to act or not to act in a certain way. In this way the conscience of the individual must conform to the law of the state. Legally speaking, the state, not the individual, is the judge of conscience-rights. No man can be allowed on grounds of conscience to stand outside the law of the state, for, in the first place, the state is based on the intelligences of the community for the common good, and the existence of rights of conscience apart from the state would defeat the object of the state; and, secondly, the admission of rights of conscience against the law of the state would, in this imperfect world, open the way for the exercise of dishonest rights of conscience. The state, therefore, through government, must be the arbiter of rights of conscience, and as such be able to compel all individuals, whatever their consciences, to act according to the law. The state may on grounds of expediency, as with conscientious objectors to conscription, permit certain latitude, but it can never affect the innermost conscience. It cannot compel a man to believe that what is bad is good, but it must control his outward actions.

6. **The Right of Association.**—In modern highly developed society individuals enter into relationships for many purposes. They form unions, clubs, societies or associations for political, commercial, philanthropic, educational and other purposes. Sometimes these associations are temporary, with only a slight organisation: sometimes they are permanent, with a very elaborate organisation. The increasing intercommunication between the various political communities of the world has led to many associations which go beyond the limits of any one state. Some of the organisations extend over many states, that is, they are international.

The State and other Associations.—The right of association in a general form is one of the elemental rights of man as a social being. The state itself depends on association; but the state as the supreme association or unity, must preserve itself among other associations. It may happen in the future that associations which extend beyond the frontiers of any one state may lead to the disappearance of individual states and the formation of a single world state; but so long as there are individual states, and so long as these are necessary conditions for the moral development of mankind, so long must the individual states preserve their identity. Already thinkers

are putting forward the claims of associations against the state ; but so long as the state continues so long must associations be within and under the state.

Limits of the Right.—The right of association must, therefore, be limited by the necessities of the state. As a rule, associations live under the protection of the state, but sometimes they may become so powerful as to endanger the state. Thus trade unions must be limited in such a way as to prevent them paralysing the moral life of a nation. The East India Company, originally a trading company, became such a powerful political body that it had to be transformed from a trading company into the Government of India. Secret political societies which aim at the subversion of government by unlawful means must also be suppressed. The same is true of all similar societies, whether secret or public, but secret societies are a particular danger as they usually favour revolutionary and illegal methods.

Generally speaking, all associations which prevent free moral development in a people are wrong, but their moral badness becomes a matter of state interference only when they endanger the state or openly contravene the end for which the state exists.

7. **The Rights of Family.**—The rights of the family rest on similar grounds to the rights of property. The family life represents an effort to make real what the individual conceives as necessary for his own good. The family state is a condition of the good life, but whereas in property the right is exercised over a thing, in the family state it is exercised over a person or persons, which implies that the individual exercising family rights must recognise that the good of others is permanently and indefeasibly bound up with his own good.

Types of Family Rights.—Many rights are included in the general name rights of family. There are the rights of marriage ; the rights against others in the purity of the marriage relation ; the rights over children ; the rights of children ; and the right of inheritance. The family is one of the essential elements in human existence, and the relation of the state to it is determined by the fact that the rights arising out of it must be maintained and co-ordinated. The types of family life differ from one country to another, but some features are general. The whole question of the relation of the state to

the family is a mixture of the legal and moral, and in many particulars these two aspects are not in agreement in every country.

Common Elements in Family Rights.—Marriage itself is a contract in perpetuity. The state can recognise no temporary marriage. The state, however, may recognise the invalidity of marriage where impediments exist which defeat the moral end of marriage. The state, too, for various reasons, may prevent marriage between very near relations. In most modern states polygamy is forbidden. The marriage relation implies the mutual surrender of personalities by the husband and wife. In other words, there is in marriage a reciprocal recognition of rights, which implies monogamy. Polygamy not only excludes many men from the married state, but it does not preserve a real reciprocity of rights between husband, wife and children. The husband in a polygamous marriage is like a master over slaves. The wife is not the head of the household save for the time she happens to be favourite, and she is also required to exercise a self-control which the husband does not exercise on himself. Then, again, the claims of children on their parents can be satisfied only by the joint responsibility of the parents, which is impossible in a polygamous system.

The state recognises certain rights and obligations on the part of husband and wife. The husband is the head of the family, its protector and supporter. The law forces him to support his family. The husband and wife, too, are bound to be faithful to each other. The law grants divorce in cases of infidelity, though it may be for the good of the family for the offence of infidelity to be condoned. The state as a rule recognises the claims of the husband or wife against other individuals, and may grant damages in case of the infringement of the right of fidelity.

The tendency in the modern world is towards legal equality of men and women in these matters, though up to the present the law distinctly has favoured the man.

The right of the parent in respect to the children is mainly a duty, viz., to support the children. The parents are the guardians of the children, and the child has no legal position till it passes out of the state of minority. The laws of the various states of the world recognise a fixed age of majority, an age which varies from state to state. States also recognise

the duty of the parent to support the child, though the duty of the child to support the parent in old age is usually regarded as a moral, not a legal duty.

In conclusion, it will be noted that these particular rights are all relative. Not one of them is absolute. They exist in the state, which is the condition of their exercise, and not one of them in itself can be supported against the paramount claims of the state.

7. POLITICAL LIBERTY

Meaning of Political Liberty.—Political liberty, in its modern meaning, is practically synonymous with democracy, which is discussed more fully in Chapter XI. Democracy is of two kinds—direct democracy in which every citizen has a direct share in the management of government, and indirect democracy, in which the citizens elect representatives to carry on the work of government. The former type is possible only in very small states where all the citizens can meet together and express their opinions ; the latter is necessary in our large modern states, where it is physically impossible for the citizens to meet together. In some countries attempts have been made by means of the *initiative,* which enables the citizens to compel the legislature to pass a certain type of law, and the *referendum,* by which a proposed law is submitted to popular vote, to eliminate representation, but as yet these have not found general favour.

The Meaning of Democracy.—Underlying democracy is the idea that each citizen should be able to express his views on the affairs of government which concern him or his country. The method by which the citizens express their views is by voting, but not everyone is allowed to vote even in the most advanced democracies. Both reason and experience show that certain classes of people must be excluded—such as aliens, whose loyalty is due to another state, lunatics, and children, both of whom cannot comprehend the issues to be voted on. The tendency of democracy in the modern world is to broaden its basis to include all adults, male and female, so that every one may have a say in government. Democracy, however, was not always so broad : the Greek democracy, for example, was a democracy only for citizens who were rich and leisured, whereas the slaves, the working classes of modern democracy, were omitted altogether.

For various reasons certain classes are sometimes excluded in modern democracies. Sometimes those who do not pay a minimum amount of taxes are excluded ; sometimes illiterate people are excluded ; sometimes certain classes of government servants are excluded. The varying principles and practice of governments are examined in more detail in the section on the Electorate.

The Problem of Democracy.—In technical language, the chief difficulty of democracy is to find an organisation which affords the greatest possible fusion between legal and political sovereignty. On the one side it is necessary to avoid the tyranny of the legislature ; on the other, it is necessary to give as free play as possible to the minds of the people. For the avoidance of tyranny there are the guarantees of a constitution, and the division of powers between legislative, executive and judiciary in such a way that one checks the other. For the testing of the popular will there are elections, which should be as frequent as is consistent with the national peace of mind, for frequent elections are very disturbing where, as in the modern world, they are managed on a party basis. The initiative, referendum, and recall, are other instruments for giving full play to the popular will. The press is also important in this respect. Local self-government, whereby municipalities and other local areas manage their own affairs, is another important element in modern political liberty.

Danger of Democracy.—One of the chief dangers of democracy is that it may go to extremes, or become mob rule. That the dividing line between political liberty and anarchy, which means lack of rule, and, as a result, social and political chaos, is not very definite is shown by the historical examples of the French and Russian revolutions. In each of these revolutions, there was a period of chaotic disorder, followed by a reign of terror, in which the opponents of the new régime were either executed or driven into exile. The theory of democracy is that all citizens are equal before the law ; but mob rule leads not only to chaos but to terroristic despotism where the rights of the governed are ruthlessly suppressed. The conditions of orderly progress are lost, and the morale of the people quickly degenerates.

Political Liberty only a Means towards an End.—Political liberty, therefore, must not be regarded as something to be attained as an end in itself. It is to be attained for the higher

moral end of the perfection of humanity, and as such its course must be marked by the gradual enlightenment of the citizens. The greatest danger of democracy is that the voice of the people may be unenlightened. Hence the same argument that applies to lunatics and children applies to the unenlightened, that, not being able to understand the issues at stake, they should not be allowed to influence the course of government.

8. NATIONAL LIBERTY

Meaning of National Liberty.—National liberty is synonymous with autonomy or independence. It means that the community concerned is sovereign. Many of the greatest wars in the world have been fought for national liberty. National liberty also involves the right to choose in which nation a people wishes to be incorporated, e.g., the case of Alsace-Lorraine in France. This is the now well-known principle of self-determination.

The various questions connected with the rights of nationalities also come under this heading. These have been discussed already in connexion with nationality.

National Liberty in the British Empire.—In the British Empire there are various grades of national liberty among the many dependencies. In all matters of every-day life British dependencies are self-governing. Some of them, the Dominions, are in most respects independent. Some dependencies (such as Gibraltar) are held for naval or military purposes, and their system of government is determined accordingly; but in the larger dependencies, the main principle of Imperial unity is voluntary co-operation.

CHAPTER VIII

LAW

1. DEFINITION

General Meaning of Law.—The word law comes from an old Teutonic root *lag,* which means something which lies fixed or evenly. In the English language the word is used

to denote that which is uniform. In physical science, for example, we speak of the laws of motion, where the word means a definite sequence of cause and effect ; and in Political Science we use the term to mean a body of rules to guide human action. Every citizen is familiar with laws of various kinds, and with lawyers and judges, who interpret or apply them. In Political Science, however, we are not concerned with the various laws and interpretations of laws, knowledge of which is necessary for the training of a lawyer. We are concerned only with the general principles of law so far as an understanding of them is necessary for a proper conception of the nature of the state. The detailed study of the principles of law belongs to the science of Jurisprudence.

Definition of Law.—Laws, no matter in what form they *may be expressed, are, according to Austin, in the last resort reducible to commands set by the person or body of persons who are in fact sovereign in any independent political society.* To this Austinian definition of law Sir Henry Maine takes the objection that it is too narrow, that it does not cover all those cases of usage in which not the direct command but the dictates of customary procedure have sway. To meet Maine's criticism Dr. Woodrow Wilson presents a conception of law which does not identify it with a definite command ; he endeavours to include in it those customary usages which have come to have binding force. "Law," he says, "is that portion of the established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of government." Dr. Woodrow Wilson thus tries to harmonise the analytical view of law with the criticisms offered by Sir Henry Maine. The best definition of a law is that given by Professor Holland—" A law is a general rule of action taking cognizance only of external acts, enforced by a determinate authority, which authority is human and among human authorities is that which is paramount in a political society ; or, briefly, a law is a general rule of external action enforced by a sovereign political authority."

Essentials of Law.—The above extract gives the essence of law. To put it more shortly, law is, in Dr. Woodrow Wilson's words, "the will of the state concerning the civic conduct of those under its authority." For law two things are thus necessary, (*a*) the civic community, (*b*) a body of

rules. No numerous body of men can live together for any length of time without having certain recognised rules of conduct. Just as the first thing necessary for the formation of a literary society or for the conduct of a public meeting is a body of guiding principles, so in a community there must be some definite rules. These rules need not be written down on paper; they may simply be the recognised customs of the people. Thus, in India, many of the rules which people observe in their daily intercourse with each other—such as caste rules—are not definitely written down, but are handed down from generation to generation in the form of custom. Before writing was invented, custom was the only source of law; the headman, chief, priest or council of elders interpreted in cases of doubt. After the invention of writing these customs were written down, and, with the growing differentiation of functions in society, laws became more numerous and more complex. With the growing complexity of law arose the necessity for skilled interpreters, viz., lawyers and judges. Not all customs were written down, and only those customs were law which the community accepted as such. In a modern government there is a definite organisation to make laws—the legislature—but it does not make all the laws. Many laws existed before legislatures were organised in their modern form, but legislatures, as the organs of the sovereign state, implicitly agree to those laws which they do not actually pass, on the principle that what the sovereign permits it commands.

2. THE SOURCES OF LAW

Sources of Law.—Professor Holland gives the following six sources of law:—

(1) Custom or Usage. (2) Religion. (3) Adjudication or Judicial Decision. (4) Scientific Commentaries. (5) Equity. (6) Legislation.

1. **Custom or Usage.**—The earliest kind of law was customary law. In primitive types of society, where the social organisation was simple and there was no art of writing, disputes were settled by the patriarch, or council of elders, according to the prevailing customs. The customs were based on the general usage of the family, tribe or clan. This usage

arose out of such needs as security of person and property, or the provision of the necessities of life, in short, utility.

2. **Religion.**—Customary law was closely connected with religion. Decisions had the force of divine inspiration, and disobedience to them brought to the malefactors the severe penalties which early religion attached to all breaches of divine law. The law thus had the double advantage of arising out of the customs of the people and of receiving the support of the early types of religion or superstition. The promulgator of the laws varied from community to community; sometimes the headman, sometimes a council, and sometimes priests or priest-kings issued legal decisions. In this respect there is a marked distinction between the east and west. In the west law tended to become political: in the east, religious.

3. **How Custom and Adjudication Operated. Judicial Precedents.**—With the growing complexity of social organisation, custom had to be supplemented by legal decision or adjudication. By the mixing of one tribe with other tribes, either for trade or marriage, conflicts of custom arose. The custom of one tribe on one matter might be at variance with the custom of another tribe on the same point. To decide such conflicts, it was necessary to refer the case to the wisest men in the community, who thus became judges whose decisions were accepted not only for the single case in question but for all similar cases. Such judges naturally became very influential persons. Knowing the customs better than others, they were referred to in all cases of difficulty, and where the old customs were obviously unfitted to the case, they would decide according to common sense. Their decisions thus became judicial precedents. At first they were given orally and handed down by tradition; later they were written down and made definite.

Custom and Interpretation.—Custom and interpretation are characteristic not only of early law: they are operative in all law. Customs grow up and die away among men without obvious reasons, and men tend to do what custom prescribes, and judges tend to decide according to what custom dictates. Though laws now are chiefly written laws, and although writing tends to check custom, judges are always affected by custom. The necessity for the interpretation of law, as we have seen, created judges, or more generally, men skilled in law, or lawyers. Lawyers, like other people, are influenced by the ideas current in their community, and in

arguing on the general principles governing individual cases they frequently must plead against old customary rules or old laws, and in this way gradually influence judicial decisions on old customary rules. Progress from the rigidity of custom thus is made possible through adjudication by trained lawyers.

Examples.—This process is observable in practically all systems of law. In the most ancient systems of law, law-codes appeared. These codes were the summary, in a definite written form, of the customary law for the community. Thus there appeared the Mosaic code, the laws of Solon, the Roman Twelve Tables, the laws of Manu, and the Koran. These codes contained certain fundamental principles, the basis of future legal progress, but they were the products of individual genius, not the expressions of any national legislative activity. All these codes were expanded in order to suit new needs, not by legislation but by custom and adjudication or interpretation. Thus, in Rome, the Twelve Tables were not succeeded by any active legislation on the part of a legislature for several centuries. The gap was filled in by the Roman lawyers, who, working on the basis of the Twelve Tables, twisted the old law to suit new conditions. As we have seen in connection with the *ius gentium,* the process was helped by custom, whereby the Roman praetor issued edicts based on the common customs of mankind to cover cases on which the existing positive law had no bearing. The praetor, it is true, could not legally bind his successors by his rulings but in practice his successors followed him. His edicts thus became laws.

In Hindu Law.—In Hindu law a similar process is observable. The most influential basis of Hindu law is the code of Manu, which is partly religious, partly legal. There are, of course, other codes, and though they belong to an early type of society in spirit, these codes are comparatively modern in form. The code of Manu recognised the influence of custom, and in this way opened the way to legal progress. "The king," Manu says, "who knows the revealed law must enquire into the . . . rules of certain families and establish their particular law." The recognition by the Hindus of the power of custom led to the creation of a class of interpreters, who, like the law itself, were partly priestly, partly legal, viz., the Brahmins. The Brahmins, adding learning to their

hereditary position as the chief caste, were able, by writing commentaries, to add new interpretations to old rules in order to suit the newer conditions of society. With the advent of British rule the process was continued. The power of interpretation and custom are still recognised, and Hindu law progresses not only by legislative enactment, but by interpretation or judicial decision.

In Muslim Law.—Muhammadan law is based on the Koran, which, though more modern than the Hindu codes, rests on divine authority. The Koran aims at a comprehensive regulation of the ordinary affairs of life, and as such has not been expanded so much as the Hindu codes by either interpretation or custom. Its basis is largely the old Arabic customs familiar to Muhammad himself. Muhammadan communities have not shown much favour for the direct legislative processes familiar in the west. Their religion and law are one. In cases (e.g., taking interest for money) they have altered the Koran, and in recent years both commentaries, such as the Hedarya, in India, and direct legislation in Turkey, have made the law more progressive by the admission of the power of custom, adjudication and direct legislation.

A similar process is observable in the spread of Roman law in Europe, to which reference will be made presently.

In English Law.—The importance of judge-made law or precedents in modern English law is to be explained historically by the fact that the king used to delegate sovereign powers to judges. In all early societies the principal function of the king or head of the community was the interpretation of law. Thus, in the laws of Manu, the king is the "dispenser of justice," not the maker of laws. The dispensing of justice was also equivalent to the interpretation of the will of God. In England the tradition of the king as the dispenser of justice still survives in the fictions that the Lord Chancellor exercises his powers as keeper of the king's conscience, and that the king presides in person over the court of the King's Bench. Obviously in a growing society the king had to delegate powers to others, but the delegation of powers was accompanied by the fiction that the judge was the representative of the king, with the king's power. The decision of the judge, therefore, was equivalent to the decision of the sovereign, and, as such, law. The king's word was law, so the judge's word was law.

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Custom and Religion.—We have seen the close connection between custom and religion. Early laws were a mixture of customs and religion. Religion has importance in law not only as giving a concurrent sanction to law based on other principles, such as custom, but religion in itself is a basis of law in most communities. We have seen above the relations supposed to have existed between natural law and divine law. Divine law, in its proper sense, is law revealed through man from God. God is the ultimate source of divine law, though man must promulgate it.

Examples.—The Greeks and Romans had very little idea of divine law as distinct from state law. The specially inspired people in Greece and Rome were not lawgivers, but advisers for particular occasions, such as the Oracle at Delphi and the Roman augurs. Among the Jews, the idea of divine law was very strong. God was looked on as the direct ruler of the people, and as such was in direct touch with them. The Old Testament continually speaks of the direct action of God in human affairs. Christ did not carry on the Jewish tradition in this direction. He left political matters alone; his life he occupied with spiritual affairs. "Render unto Cæsar the things that are Cæsar's, and unto God the things that are God's" was his principle. To the Christian there is a revelation, not of state-law, but of moral fundamentals. In India, the Hindu law is a revelation of God's mind in which religious precepts are combined with the regulations for everyday life. The Koran is a direct descendant of the old Jewish theocracy. It is the direct law of the Prophet, and binding in both the religious and civil spheres of life.

Divine law such as that of Manu or the Koran is a direct source of law insomuch as it is always acknowledged by the state. No state can allow divine law as an appeal against state law. Instead of allowing the possibility of antagonism, the state acknowledges these laws. Thus the Shastras and Koran are acknowledged (21 Geo. III, C. 70, section 17) to be the laws of the Hindus and Muhammadans in India. Conflict, therefore, between religious feeling and law does not arise. Moreover, in cases where positive law does not apply, judges are likely to go on the supposition that the sovereign authority, if it had legislated for this particular case, would have accepted the religious interpretation, and thus religion is also a source of judge-made law.

4. **Scientific Commentaries.**—The next source of law is scientific commentaries. In courts of justice the greatest importance is attached by both lawyers and judges to the opinions of great legal writers or jurists. Thus, in England, the opinions of Coke, Hale, Littleton, Blackstone, and Kent are held in the highest respect, and in India the Hedarya, the Futwa Alumgiri, the Mitakshara, and the Dayabhaga. The opinions of commentators are not decisions; they are only arguments: as Sir William Markby says, "A commentary, when it first appears, is only used as an argument to convince, and not as an authority which binds." Arguments, however, by becoming recognised, are tantamount to accepted decisions. The authority of the commentator is established, just like a judge-made decision, by frequent recognition, so that the principles enunciated by him become even more authoritative than judicial decisions. Judicial decisions, however, differ from commentaries in that judicial decisions apply to a given case; commentaries deal with abstract principles. The commentator, by collecting, comparing and logically arranging legal principles, customs, decisions and laws lays down guiding principles for possible cases. He shows the omissions and deduces principles to govern them. He provides the basis for new law, not the new law itself. It must be noted that legal commentaries must command sufficient respect among lawyers to enable them to be taken as standards. Relatively few commentators acquire a reputation sufficient to make them sources of law.

5. **Equity.**—Equity is also a source of law. The influence of equity in connection with the *ius gentium* we have already seen. Equity, in the words of Sir Henry Maine, is "any body of rules existing by the side of the original civil law, founded on distinct principles and claiming incidentally to supersede the civil law in virtue of a superior sanctity inherent in those principles." Equity is simply equality or justice, or, in cases where the existing law does not properly apply, judgment according to common sense or fairness. Equity, as a source of law, arises from the fact that positive law, as the world advances, tends to become unsuitable for new conditions. To make it suitable either the law must be altered formally by the legislature or some informal method of alteration must be adopted. Equity is an informal method of making new law or altering old law, depending on intrinsic

fairness or equality of treatment. Thus the Roman praetor, on assuming office, issued a proclamation telling the manner in which justice would be administered during his term of office. The basis of the proclamation was equity, based on the law of nature or nations.

In England the beginning of equity legislation is to be traced to the custom of giving to the Lord High Chancellor complaints addressed to the King which were not met by the existing common law. These appeals were made to the King's justice or conscience and were referred to the "keeper of the King's conscience," or the Lord High Chancellor (modern Lord Chancellor), who received powers to remedy injustice according to equity or fair dealing, or the moral law. Similar functions were assumed by other courts besides the Lord Chancellor's Court, or Court of Chancery, but the Court of Chancery is the supreme judicial organisation for equity jurisdiction. In contrast to Rome, equity is enforced by a distinct set of judges.

The subject matter of equity belongs to the science of Jurisprudence. The usual classification of equitable jurisdiction is into exclusive, concurrent and auxiliary. Equity is exclusive where it recognises rights not recognised by the common law; it is concurrent, where the law recognises the right but does not give adequate relief; and auxiliary, where the necessary evidence cannot be procured.

6. **Legislation.**—The last and most important source of law is legislation. Legislation is the declared will of the sovereign state. In the modern world it is the chief source of law, and is tending to supplant the other sources. Custom and equity are both largely replaced by definite legislative acts. The codification of law tends to narrow down the field of judicial decision as a source of law, and scientific commentaries are used mainly for discussion. In the creation of new enactments, custom, religious opinions and equity all play their part; in doing so they are not so much direct sources of law as influences in law-making.

The organisation of modern legislatures will be dealt with separately. Only a few general points need be mentioned here. In the greater part of the modern world, legislation is the work of representative assemblies. These assemblies are the organs of the popular will, and as such they are constantly widening the field of legislation. The people, realising their

power as legislators, or as the electors of legislators, make constant demands on legislative bodies to make laws of this or that type. All modern democratic legislatures are so overcrowded with proposed laws that the most elaborate arrangements have had to be made for the conduct of public business in order to save time. Whereas, in earlier days, the assemblies legislated mainly in matters of public law, leaving private law to custom and the decisions of judicial tribunals, nowadays the legislatures deal with both public and private law. The people, jealous of law not emanating from their elected assemblies, have thus narrowed down the sphere of custom and judge-made law. As we shall see later, a most important modern theory of liberty, the theory of the separation of powers, demands a clear distinction between the legislature, executive and judiciary. This theory, the basis of the organisation of the government of the United States of America, has given to legislation a theoretical independence at the expense of both the judiciary and executive. Fallacious in many respects though the theory is, it certainly has heightened the importance of modern legislatures as the source of law.

3. THE VARIOUS KINDS OF LAW

Law may be classified in various ways, according to the particular basis adopted by the writer. For our purposes, however, we may divide law according to the agency through which it is formulated into :—

(*a*) **Constitutional Law.**—Constitutional law, of which more will be said in the chapter on the Constitution. Constitutional law may be written or unwritten ; it may be promulgated by a body specially created for the purpose, or it may grow up gradually without any source other than the customs of the people and the ordinary law-making body in the state. However it arises, constitutional law is the sum of the principles on which the government rests, principles which prescribe the ordinary course of governmental procedure and lay down the limits within which the powers of government can be exercised.

(*b*) **Statute Law.**—Statute law, the most familiar type of law made by the ordinary law-making bodies, e.g., by the

King-in-Parliament in the United Kingdom, and by Congress in the United States.

(*c*) **Ordinances.**—Ordinances, issued by the executive branch of government within the powers prescribed to them by the law of the state. Ordinances are not as a rule permanent, and are issued for the special purpose of administrative convenience.

(*d*) **Common Law.**—Common law, which rests on custom, but is enforced by the law courts like Statute law.

(*e*) **International Law.**—International law, or the rules which determine the conduct of the general body of civilised states in their dealings with each other.

(*f*) **Administrative Law.**—Administrative law, which prevails on the continent of Europe, whereby public officers are subject to separate law and procedure from private individuals.

The Basis of Public and Private—Professor Holland's Division.—Professor Holland divides law according to the public or private character of the persons with whom legal rights are concerned. A "public" person means either the state, or a body or individual holding delegated authority from the state. A "private" person means either an individual or a collection of individuals, who do not represent the state even for a special purpose. When both the persons with whom a right is connected are private, the right is also private; but where one of the persons is public, the right is public. Thus law may be divided into: (*a*) Private law, when the right is between subject and subject; (*b*) Public law, when the right is between state and subject.

Public law Holland subdivides into: 1. Constitutional law. 2. Administrative law. 3. Criminal law. 4. Criminal procedure. 5. The law of the state considered in its quasi-private personality. 6. The procedure relating to the state so considered. This classification is only one among many, as classification depends on the basis adopted by the individual writer.

Written and Unwritten.—Laws have also been classified into written (or statute) law, and unwritten (or customary) law. In legislation, both the contents of the law are fixed, and legal force is given to it, by acts of the sovereign power. This produces written law. All the other sources of law (such as adjudication, usage, scientific discussion, etc.), give rise to what is called unwritten law. This classification is not, however, quite a scientific one.

4. DEVELOPMENT OF MODERN LAW IN THE WEST

The Roman and Teutonic Systems.—Modern European law has two sources—Teutonic and Roman. The Roman conquerors carried their system of law with them wherever they went, but that system did not supersede the indigenous systems of the barbarians. Roman law was markedly different from the Teutonic. To the Romans law was command of the state, issued through government officials ; to the Teutons law was a matter of custom, each tribe or people having its own customs, and, accordingly, its own law. Roman law was the law of a unified state, Teutonic law was the law of diverse peoples. After the fall of Rome, the invaders—Goths, Franks and Lombards—established separate governments of their own, so that the old unified Roman law was replaced by the particular law of each conquering people. Before the fall of the Empire, however, the Romans had established Roman law for Roman citizens, and the invaders allowed the Roman citizens to continue under their own law, very much in the same way as Europeans and Indians live at the present time in India. This continued through the various wars of conquest following the fall of the Roman Empire. Even the great Charlemagne respected the system he found. What happened was that everyone kept the law of his own people, with the result that under one ruler there were frequently several systems of law—one Roman, one Gothic, one Frankish, and so on.

Feudalism.—With the advent of feudalism the basis of law changed. Hitherto the law had been personal. The son came under the same law as his father, but with feudalism the basis changed from personal descent to territory. Instead of law being applicable to families, it was made applicable to a particular area. This meant that all people living within a stated area were under one law. This tendency towards centralisation was helped in other ways. Throughout the mediæval struggles Roman law had possessed the virtue of unity and system, which gradually prevailed against the multiplicity of the Teutonic customs. Though the Romans were overcome their law survived, so much so that, with the exception of England, the law of every modern European country is preponderatingly Roman in character.

Influence in Supremacy of Roman Law.—The chief influences in the supremacy of Roman law were, first, the Latin

language as the medium of intercourse among the higher classes, just as English is at present in India. Second, the Roman legal codes. Despite the overthrow of Rome, the barbarian kings recognised the strength of the Roman law, and they had codes prepared. The Breviary of Alaric, King of the Goths in Spain, drawn up in the sixth century, was an abstract of the Roman laws and imperial decrees for his Roman subjects. It kept alive the Roman légal system till the code of Justinian, the greatest code of law in the world, was drawn up. This code, known as the *Corpus Juris*, or Body of Law, was created to systematise the existing Roman Law, which was in a state of much confusion in Justinian's time. Third, the church with its law, technically known as canon law. The church was essentially Roman in organisation and spirit. Not only did the church keep alive the form and spirit of Roman institutions, but it was the chief medium of education in the middle ages, and, through its preachers and teachers, was able to influence both ignorant and educated as it pleased. Fourth, the influence of lawyers, both ecclesiastical and secular. After the twelfth century, the code of Justinian was taught all over Europe. Law schools arose in considerable numbers, first at Bologna in Italy and in Paris, ultimately spreading to Spain, Holland and England. The lawyers trained in these schools were naturally imbued with the Roman spirit, and with the decay of popular courts and the growth of central courts their influence spread wider and wider.

The gradual amalgamation of the Teutonic and Roman systems, with the predominance of the Roman, is a matter of legal history. Among the various influences may be mentioned the Napoleonic Code (Code Napoléon) of 1804, in France, the first code of the French civil law. This code has had great influence. The Belgian, Dutch, Italian, Portuguese, and partly the Spanish codes and the codes of the Spanish South American states have all been affected by it. Its only European rival is the German code, which was drawn up at the end of the nineteenth century.

Legal Development in England ; The Power of Roman Law.—A different course marked the legal development of England and countries which, like the United States of America, owed the origin of their law system to England. England, separated geographically from the countries of Europe

which adopted the Roman system, developed along her own lines. Because she had been under Roman sway for some centuries, England could not escape completely from Roman influence in law, but that influence was exerted principally in the ecclesiastical courts. The influence was also felt in the admiralty courts (in matters of international law). In spite of the efforts of the church to further the cause of Roman law, the courts resisted its influence so strongly that, as Sir William Markby says, "no one has ever been able to quote a text of the Roman law as authority either in the courts of common law or the courts of Chancery."

The crown naturally preferred the Roman system because it was so suitable for national centralisation ; but the English courts were able to preserve their independence by restraining the ecclesiastical courts. In this they had the support of the nobles and commons, as well as occasionally that of the king, who did not look with favour on the growing power of the church. It is remarkable that the church, with learning and religious influence on its side, was unable to make a stronger mark on the law of England.

Custom and Case-Law.—The indigenous English law was not able to fill all the gaps that the development of the times made. These were filled by custom, and the interpreters of the customs were the judges. On the judges, therefore, fell the duty of extending the law, which otherwise might have been effected on Roman principles. Customs later led to the formation of precedents. Up to the time of Henry VII, Year Books of decisions were published. These decisions sometimes were original, and sometimes they followed previous decisions on similar points, or precedents. They were for the most part simply the application of common sense to the cases that arose. Precedents at first were only guides for subsequent judges, but in course of time they were compulsory. They became as important as statute laws, and their growing importance led judges to be more careful in the form of their judgments and to give more reasoned statements for their conclusions. Thus, while in the rest of Europe Roman principles underlie the legal system, its place in England is taken by previous legal decisions, or case-law.

Comparison with Roman Law Systems.—The result in actual practice is that, where Roman law prevails, the decisions

of judges must follow the Roman general principles. In England and the United States, the judge is largely free to use his common sense. Obviously the English system, though lacking in symmetry, is more suited to change than the Roman. Another marked difference between the English and continental legal systems is that on the continent judicial decisions are not authoritative, as they are in England. It is true that imperial rescripts or decrees in particular cases were treated as authoritative, but that was because the Emperor was regarded as the source of law. No judge or tribunal had such authority.

Influences in the West.—In the western systems of law other influences have played a part. Naturally in Christian countries the Jewish law of the Old Testament is traceable. This law came from the church in the middle ages. At that time politics and religion were hopelessly mixed up. After the Reformation protestant ideas also found their way into the European legal systems.

Where fusion has taken place between Roman and Teutonic law, generally the Roman prevails in the domain in which it reached its highest perfection, namely, private law. Roman influence also is marked in colonial and municipal law, spheres in which Roman experience filled in the gaps in the legal system of the Teutons. Teutonic law prevails in public law, for the Teutons, with self-government and the idea of representation, founded their governments on their own familiar customs.

5. LAW IN BRITISH INDIA

Before the British : Hindu and Muhammadan Law.—Before the advent of the British, there were two principal legal systems in India. One was the Muhammadan law, the other the Hindu law. The Muhammadan law applied to Muhammadans, and the Hindu law to Hindus, but some of the penal provisions of Muhammadan law were applied to the Hindus also. The Muhammadan law, based on the Koran and its legal commentaries, treated some subjects, particularly family relations, inheritance, and *wakf* (the law concerning religious foundations), in considerable detail. The Hindu law was partly religious and partly social, but was far less systematic than the Muhammadan. In origin, as

in the Institutes of Manu, Hindu law is supposed to be a direct emanation from God. Its interpretation was given to the Brahmins, whose sacred position continued the original religious sanction of the law. When the British power was organised in India, the newly established courts enforced the rules of both Hindu and Mussulman law.

Influence of Commentaries.—In the case of both Hindu and Muhammadan law, the original codes were to some extent amplified or modified by the writings of lawyers. The most learned Brahmin commentators became recognised authorities in Hindu law. The Sayings and Doings of Muhammad (the Sannat and Hadis), the decisions and writings of Mullahs and Muftis altered the Koran of the Muhammadans.

Customs.—Besides the Hindu and Muhammadan law proper, there was a large number of customs, often purely local, affecting rights to the use of land, tillage, forests, etc. There was also a body of mercantile or trading custom, relating to the transfer of property.

The Position when the British came.—Thus when the British came to India they found :—

1. The Hindu and Muhammadan law, altered in certain respects by interpretation and commentaries, mainly founded on the Shastras and Koran.
2. Many customs, sometimes general, sometimes local, which governed the use of land, tillage, and forest-rights.
3. Certain mercantile customs, observed by traders and recognised particularly by the Muhammadans, and customs which governed the transfer and pledging of property.
4. Penal rules, drawn up and enforced by the Muhammadan rulers.

The Legal Policy of the British.—The law that the East India Company found in India was personal or religious, not territorial. It was applicable only to individuals belonging to the particular religion to which the law applied. The indigenous law also was lacking in certain well-established branches of English law, particularly in civil and criminal procedure and in the law of torts or civil wrongs. The law governing property and contract was also very defective. What the Company did was to accept what they found as applying to the various communities of Indians, but they made English law applicable to themselves. The English could not accept many of the provisions in the law they found,

such as mutilation or stoning as punishments, the fact that Brahmins should have a special law to themselves, and that a non-Muhammadan could not give evidence against a Muhammadan. The English, thus, while allowing the indigenous law to continue as applied to Indians, brought with them for themselves both the common and statute law of England.

The Effect of English Law.—When the High Court of Calcutta was established in 1773, the English lawyers began to apply English law to both English and Indians. The Declaratory Act of 1780, by making it compulsory that their own law should apply to Hindus and Muhammadans, stopped this practice. The system of the Declaratory Act prevails to-day, and the Privy Council in England often has to determine the exact interpretation of the Koran or the Shastras. Both the Koran and the Shastras have been affected by western jurisprudence, and the precepts established in the courts. Not only so, but the Government of India has power to alter the Acts of Parliament enforcing the observance of Hindu law for Hindus and Muhammadan law for Muhammadans. Many statutory modifications have been made—notably the Bengal Sati Regulation (1829), the Indian Slavery Act (1843), the Caste Disabilities Removal Act (1850), the Hindu Widows' Re-marriage Act (1856) and the Civil and Criminal Procedure Codes.

Legislation.—The chief source of modern Indian law is legislation, either by the British Parliament, or by the Indian legislative bodies. The old Hindu and Muhammadan divine law as well as a number of older English statutes, English common law, and Indian customary law still apply in their respective spheres.

Codification.—One of the most noteworthy things in modern Indian law is the codification which has taken place. With the organisation of a judicial system it soon became necessary to organise procedure. In 1781 the British Parliament authorised the Government of India to make regulations for the conduct of courts. In 1773 the creation of the High Court in Calcutta had already necessitated a code of procedure. This code was made on English models, but the Act of 1781 enjoined that the English rules should be made suitable for the Indian people. What the English did at first was to adopt the prevailing Mussulman practices, but

where these were unsuited to western ideas they were supplanted by English rules. The result was a confused mixture which lawyers found difficult to interpret and judges to apply.

In 1833 the India Charter Act was passed. It provided for the appointment of a number of legal experts, called the Indian Law Commission, who were to ascertain the various rules applicable in the courts and in the law of British India, and to report regarding their consolidation, and, if necessary, their amendment. This commission was appointed in 1833, Macaulay being the most prominent member. It drafted a Penal Code, which did not become law till 1860. In the meantime (in 1853) another commission was appointed, which worked in England. The result of this commission was the passing of the Penal Code, which was drafted by the previous commission, and two codes of Civil and Criminal Procedure. A third commission, appointed in 1861, drafted other proposals but resigned in 1870 owing to the resistance offered to its proposals by the Government of India. After this the work of codification and revision was carried on in India under the Law Member of the Governor-General's Council.

As the result of these commissions, and of the activity of the Legal Member of the Viceroy's Council, legal systematisation in India has been very great. Except in torts, or civil wrongs, certain branches of contract law, family law, and inheritance (both of which are determined by the indigenous law and custom, unless governed by the Succession Act), the statutes resulting cover the whole field of law. The greatest of them all is the Indian Penal Code (the I.P.C.), which was drafted by Macaulay. It is based on English criminal law, but its provisions are made specially applicable to India where necessary. Thus self-defence is more widely interpreted in India because Indians are usually unwilling to use force in self-defence. Dacoity, judicial corruption, police torture, kidnapping, insults to religious places, all these are treated more fully than would be necessary in England. The death penalty, compulsory in England, is in India made an alternative.

In practically every branch of law, save those mentioned, codification has taken place. Among the various Acts may be mentioned : The Codes of Civil and Criminal Procedure of 1861-1882 and 1898 (Criminal), and 1859 and 1882 (Civil);

the Evidence Act, which codifies the laws of evidence, the Limitation Act, the Specific Relief Act, the Probate and Administration Act, the Indian Contract Act, Negotiable Instruments Act, which gives the law regulating promissory notes, bills of exchange, and cheques, the Trusts Act, the Transfer of Property Act, the Succession Act, the Easements Act, the Companies Act, the Inventions and Designs Act, the War and Cantonments Act, the Guardians and Wards Act, the Official Secrets Act. The various Acts governing railways, shipping, the post office, companies, factories, co-operative credit societies, electricity, lunacy and provident insurance have also been codified. Some of these Acts have met with unfavourable criticism, but the process by which they were drawn up admits easily of amendment. Every year amendments are made to some of the Acts, the amendments not being new Acts but mainly textual alterations in the old ones. The codification has certainly been of great use in the administration of the laws.

A considerable amount of revision of Statute Acts also has been done, both by codification and consolidation. Of the work of consolidation an excellent example is the Code of Criminal Procedure of 1898 (Act V of 1898) which repealed and replaced eighteen separate enactments by consolidating them into a new Act.

6. LAW AND MORALITY

Connection between Law and Morality.—We have already seen the general connection between Political Science, the science of the state, and Ethics, the science of morality. Both Political Science and Ethics deal with man as a moral agent in society. The state is the supreme type of social union, but the state is only a means to an end. It is not an end in itself. It is a means towards the moral end of the perfection of men in society. Therefore the acts of the state must have an integral connection with the moral end of man. Law is made by the state and enforced by the state, but the law of the state only affects part of man's life. It affects only the outward acts of life. Matters of the conscience must be decided by the conscience. Thus the state, by its law, punishes breach of contract, but it does not punish lying as such. Dishonesty, ingratitude, meanness, covetousness, anger and jealousy are all immoral; but

they are not illegal, except when they lead to a breach of law. The state does not punish a man because he loses his temper, but it punishes him if he assaults or kills another man in temper. The state does not punish for covetousness but it punishes theft arising out of covetousness. Thus law and morality differ (*a*) in their sanction, one being enforced by the state, the other being a matter of conscience, (*b*) in the type of action affected, law dealing with the outward acts of men, ethics dealing with all the actions of men; and (*c*) in their definiteness. Law is thus a matter of force; but morality cannot be forced. Law, again, often is based on expediency. Acts which in themselves are not immoral are made illegal because it is expedient that they should be so. Thus it is not immoral to ride a bicycle without a light, but it is made illegal because it is dangerous to other people. It is not immoral for a trustee to buy the estate for which he is responsible, provided the other parties are satisfied, but law prevents such a contract because it opens the way too easily to fraud. Thus law creates a class of wrongs which are not moral but legal wrongs. They are wrong because they are illegal, not because they are immoral.

The state is founded on the minds of its citizens, who are all moral agents. The connection between them, therefore, must be close. A bad people means a bad state and bad laws. An unhealthy public opinion, in modern representative government, must eventually mean bad laws. "The best state," as Plato said, "is that which is nearest in virtue to the individual. If any part of the body politic suffers, the whole body suffers." Modern political theory, with the organic view of the state, has returned to the Greek theory. The individual has an inherent connection with the state. The state therefore must affect the morality of individuals as well as the morality of individuals must affect the state.

The individual moral life manifests itself in manifold ways. The state is the supreme condition of the individual moral life, for without the state no moral life is possible. The state therefore regulates other organisations in the common interest. The state, however, has a direct function in relation to morality. This function is both positive and negative. As a positive moral agent the state makes good laws, that is, laws which are in accord with the best moral interests of the people. Negatively, the state must remove

bad laws. It is to be noted that what may be a state law in one generation becomes a moral law in the next, so that the margin between illegal and immoral is not always clear. Thus when compulsory education is introduced into a country, it is at first illegal to keep one's child from school. In the next generation what was previously a crime becomes a sin. The father feels it a moral duty to educate his children.

Thus, though there are certain differences between the law of the state and the moral law, they are inherently connected. In the modern world we do not make the state the supreme end, as did the Greeks. We regard it as the condition of morality. The state and law continually affect both public opinion and actions; in its turn law reflects public opinion and thus acts as the index of moral progress.

7. INTERNATIONAL LAW

Is International Law Properly Speaking Law?—The subject of International Law affects us here only in so far as a general knowledge of its principles enables us better to understand the nature of the state. The subject now forms a special course of study, and its detailed treatment is a matter for lawyers.

We have seen that law is an order of the state. The state both makes it and enforces it, but the law of a state applies only to the citizen of that state. International law thus would imply an international state, if the word law has the meaning that we have just ascribed to it. An international state which could enforce international law would mean that the states that exist at present had a higher authority over them. It would thus destroy their sovereignty. There would then only be one state, properly speaking (that is, with the characteristic of sovereignty) that state being the international state. But states *are* sovereign, therefore, the first question that arises in connection with international law is whether international law is really law at all. Law, as we have seen in the discussion on that subject, is the expressed or implied will of the state concerning the citizens of the state, which must be obeyed by those citizens. It is a general body of rules behind which lies the whole force of the community as organised in the state and government. If a citizen breaks the rules, he will be punished; in other words, he is forced to obey the

rules. Does any such force lie at the back of international law ? There *is* force, the force of the minds which made up these rules, but these minds are not organised into a single organ of compulsion. International law, to be real law, would require some international organ to enforce it. At present each state interprets international law for itself ; there is no international court for interpretation of the law. States sometimes refer matters in which they have differed to a special tribunal, but even then they are not legally bound to accept the decision of the tribunal. Each state acts for itself and even if it acts against the opinion of the whole civilised world, there is no restraint upon that state outside an international war. No individual in a state can break the laws of the state with impunity : but a state may break international law at will. The only constraints are the fear of the disapprobation of other states and the risk of bringing war on the state itself.

The sanction of international law has the same basis as the sanction of ordinary law, viz., the common will underlying the legal principles. Law does not consist merely in the making of a definite code : it is rather the recognition by the state of principles already definitely existing among the people ; and the sanction of the law, which in the first place is shown in the machinery of the state, really is the common agreement of the people. In a similar way international law must have at its root the mutual agreement of nations : its sanction will depend on the growth of a common will among peoples, and (though it seems a paradox), when international law has a firm sanction that sanction will destroy it as international law. A common will which can enforce international law will mean the breaking of the bounds of states and nations. The word "international" will then have lost its meaning. A complete sanction to law between nations as they at present exist would imply the fusion of states at present distinct. Even at present, in spite of the repeated breach of international law during the two World Wars, a considerable body of the recognised principles of international law is observed ; none the less, the fact remains that it is observed merely as a law of convenience for individual states : no obligation, beyond the obligation of honour, binds states to observe international law.

International law is in this way half law, half morality. Some lawyers regard the term law as including not only the definite positive law of the state, but also law in the process of being made. In this sense International Law is law. It is in the process of becoming positive law, but it can become law in the national sense of law only when it has the sanction of a definite state.

Views of Authorities.—Among the older writers, such as Hobbes and Pufendorf, International Law is not looked on as law. Bentham, Austin, and Professor Holland, among modern writers, support the same view. The Austinian view of law as a body of rules for human conduct, set and enforced by a definite sovereign political authority, does not admit of the recognition of international law as law. It belongs to the sphere of positive morality. Modern jurists, however, tend to place International Law definitely within the sphere of law. Variation in views is natural, because both the content of International Law and the development of international institutions have altered considerably, especially in the last half century, and are likely to develop still more rapidly in the near future.

The chief reasons adduced by modern authorities for regarding International Law as law are :—

(*a*) that the rules embodied in International Law are in their nature not optional but compulsory. In the last resort they rest on force, although that force is exercised more through the action of society or public opinion than through a definite authorised body. The Covenant of the League of Nations attempts to create a definite body for its enforcement ;

(*b*) that already its legal qualities have been proved by the fact that its rules are accepted as law by states and are appealed to as law by contesting parties ; and

(*c*) that its rules have been built up by legal reasoning and are applied in a legal manner.

Professor Westlake argues that as states live together in the civilised world substantially as men live together in a state, the difference being one of machinery, we are entitled to say, not on the ground of metaphor, but on the solid ground of likeness to the type, that there is a society of states and law of that society which goes by the name of International Law. Perhaps the aptest description of the

legal nature of International Law is that given by Pollock,—"International Law is a body of customs and observances in an imperfectly organised society which have not fully acquired the character of law, but which are on the way to become law."

Definition of International Law.—International Law, as defined by Wheaton, one of the highest authorities on International Law, is "those rules of conduct which reason deduces as consonant to justice from the nature of the society existing among independent nations; with such definitions and modifications as may be established by general consent." In more simple language, International Law is the body of rules which civilised states observe in their dealings with each other, these rules being enforced by each particular state according to its own moral standard or convenience. Some states are as honourable in their observation of the rules of International Law as they expect their citizens to be in obeying state or municipal law, while others observe the principles only when it suits their own convenience.

Content of International Law.—The content of International Law may best be summarised by a list of the subjects discussed, and settled at the Hague Conferences. The various Conventions reached in 1907 were: (1) For the pacific settlement of international disputes. (2) Respecting the limitation of the employment of force for the recovery of contract debts. (3) Concerning the commencement of hostilities. (4) Concerning the laws and customs of war on land. (5) Respecting the rights and duties of neutral powers and persons in war on land. (6) Concerning the status of enemy merchant ships at the outbreak of hostilities. (7) Concerning the conversion of merchant ships into warships. (8) Concerning the laying of automatic submarine contact mines. (9) Regarding bombardment by naval forces in time of war. (10) For the adaptation of the principles of the Geneva Convention to maritime war. (11) Regarding restrictions on the right of capture in maritime war. (12) Regarding the establishment of an International Prize Court. (13) Regarding the rights and duties of neutral powers in maritime war. (14) Prohibiting the discharge of projectiles from balloons.

Many other subjects arise as time goes on. The most important recent subject is that of air control, on which in due course appropriate international codes will be drawn up.

8. HISTORY OF INTERNATIONAL LAW

Three Periods.—Lawrence, in his *Principles of International Law,* gives three periods in the development of international relations. These periods cover practically the whole stretch of history, and though one is divided from the other for the purposes of historical exposition, the earlier periods are really the bases of the later periods.

1. **To the Beginning of the Roman Empire.**—The first period stretches from the earliest times to the establishment of the Roman Empire. Among the earliest peoples of which history tells, there was practically no international regulation. Each country was hostile to its neighbour and despised it. War was declared without ceremony and carried on without mercy. Even the highly civilised Greeks regarded their neighbours as unworthy of notice save for the purpose of conquest. The only traces of any international dealings we have from them were in maritime trade, for which a code grew up in Rhodes. Greek thought, not Greek practice, contributed considerably to international development. The greatest philosophers of Greece, Plato and Aristotle, were limited in their political views by the small city state. But even they, in places, voice the idea of natural law, which later developed into the internationalism or social ideal of the Stoics. From the Stoics the idea passed to Rome.

In Rome, before the Empire, such international law as existed was called *ius feciale.* This law contained precepts about war and peace, and was propounded by a special religio-legal college. The *ius feciale* is of little importance in the development of what we now know as international law. The great contribution of Rome was the *ius gentium,* the development of which has already been noticed.

2. **From the Beginning of the Roman Empire to the Reformation.**—The second period stretches from the beginning of the Roman Empire to the Reformation. With the spread of Roman power over the whole world, as then conceived, there was no question of international relations, as there was only one state. Even after the fall of the Roman Empire the imperial idea continued, and it was only after the Pope and Emperor each claimed the imperial power that this idea was shaken. With the revolt against the Papal authority at the Reformation, the Pope's claims to world-power were lost, and with the growth of modern national states the idea

of the temporal supremacy of the Empire was killed. With the decay of the imperial idea arose other influences which helped the development of International Law. The feudal system, with its territorial sovereignty, brought out the idea of territorial states, each state having jurisdiction over citizens residing on a definite territory. The spread of Christian principles taught humane ideas. Grotius, the founder of modern International Law, was really instigated to his work by the devastation and sorrow caused by the many wars of his time. Roman law, with the *ius gentium* and the idea of equality before the law, also was an important influence. Schools for the study of Roman law sprang up all over Europe. Lawyers imbibed the principles which later became the basis of International Law. The idea, arising from feudalism, that the king was the owner of his country also lent itself to treatment by the principles of Roman law.

3. **Reformation to the Present Day.**—The third period extends from the Reformation to the present time. The ideas current in the common consciousness of Europe were systematised during this period. The rise of independent states made some definite regulation of their relations essential. The first modern work on International Law was *On the Law of War and Peace* by Hugo Grotius, a Dutchman. Grotius enunciated as the two main principles of international relations that (*a*) all states are equally sovereign and independent, and (*b*) the jurisdiction of any one state is absolute in the area belonging to that state. After Grotius many writers took up the question, and now it has become a special branch of law. As time goes on, both International law and international organisations are becoming more definite. In the latest development, the League of Nations, provision is made for the creation of a permanent Court of Justice, which has been set up at the Hague, the seat of the previous international tribunals.

9. THE SOURCES OF INTERNATIONAL LAW

The various sources of International Law are :—

1. **Roman Law.**—We have already seen how Roman law affected the various law systems of the world. The same law also provided a basis for the settlement of questions arising between nations. Not only so, but Roman law provided a positive basis for International Law in two ways : (*a*) by the

idea of the law of Nations ; (*b*) by contributing the notion of the equality of citizens before the law, a notion which was extended to the equality of sovereign states in International Law.

2. **Authorities.**—Writers of authority. These writers, by showing what rules nations actually do observe, by interpreting general opinion on given questions, and by giving definitions and modifications of previous rules based on general consent, provide a source of International Law. Such writers, like writers on municipal law, must be recognised authorities on the subject. The greatest name among them is that of Grotius, whose *War and Peace*, 1625, gave the theoretical foundation of International Law. Pufendorf, in his *Law of Nature and of Nations,* (1672) ; Leibnitz, in his *Diplomatic Code of the Law of Nations,* (1693-1700) ; Bynkershoek, (1673-1743), who first dealt with maritime law ; Wolf, (1679-1754) and Vattel, (1714-1767) are other important names in the development of International Law. The names of Kent, Wheaton, Manning, Woolsey, Westlake, Lawrence and Hall may be noted among more modern writers. Writers such as these are recognised authorities to whose opinions statesmen continually refer as authoritative or final.

3. **Treaties, etc.**—Treaties of peace and commerce, alliances, and conventions. These define pre-existing rules or modify them. Treaties, which may be signed by two or more states, lay down the principles on the subject in question which the various states agree to observe. They may affirm existing rules, or modify and explain them. They may affect territory, as the treaties of Westphalia, (1648), and Utrecht, (1713), or the transfer of sovereign rights, as the treaty of Paris, (1856). They may affect commercial relations or conduct to be observed during war by both belligerents and neutrals, such as the famous Geneva Convention of 1864.

4. **Municipal Law.**—The laws of particular states, or municipal law. In the municipal law of every state there are many statutes which affect international relations. Every state must decide for itself the terms on which it will allow a citizen of another state to become one of its citizens. This is known as naturalisation. The regulations affecting ambassadors who represent one state in another state, envoys, and consuls have all international bearings. Particularly

important are the rules of individual states with regard to admiralty questions. Admiralty questions dealing with prize cases are based on international usage, and the decisions of admiralty courts form a basis of International Law.

5. **Judgments in International Cases.**—The adjudications of international tribunals and conferences. Tribunals or conferences are sometimes set up to decide particular cases. These cases may be referred to them by another state, or they may concern only the states represented at the tribunal. The decisions of such tribunals are more authoritative if several states take part in them.

6. **History of War and Diplomacy.**—The history of wars, of negotiations, the circumstances leading to treaties as contained in protocols (drafts, containing the fundamental principles), and manifestoes (containing statements of policy) and all international transactions are sources of International Law.

7. **Opinions of Diplomatists and Statesmen.**—The written opinions of eminent lawyers contained in state papers and diplomatic correspondence in the Foreign Offices of states. Often these opinions are confidential, but with the growth of democracy there is a greater tendency to publish them. Both England and the United States of America publish the main part of their diplomatic papers, and these, circulated in other countries, give a basis for future international action.

The Hague Conferences.—By far the most important international conferences have been those held at Hague. The Hague Conferences have been called "the parliament of mankind." They have systematised International Law, and from them the Hague Court of Arbitration developed. Much that the International conventions agreed to and systematised at the Hague has been incorporated in the municipal law of the states which took part in the conferences. The Court of Arbitration was established to enable states, if they so wished, to refer disputes to it, and since its creation in 1899 it has decided many questions—and the decisions have been accepted by the parties concerned. From 1899 to 1912 eleven separate nations had recourse to it. The conference also attempted to create an International Prize Court of Appeal, which brought about a Conference in London (1908-09) on Prize, and led to the Declaration of London, concerning blockade, contraband of war, the position of neutrals and compensation. The

Declaration of London was withdrawn during the Great War by the British government.

The Permanent Court of International Justice is described in the following section.

10. THE LEAGUE OF NATIONS

The Origin of the League.—The immediate cause of the League of Nations was the Great War (1914-18). Historically the League is but a further development of the international movements which have just been examined. The Great War in several respects aided the growth of an international organisation. In the first place, the struggle was so bitter and it caused so much misery, that all nations and individuals were convinced that wars should be avoided, and that some effective means of settling international disputes should be created. In the second place, the Great War was fought largely on the principle of nationality. Many nationalities were made into nations by the peace treaties, but some of these nationalities required guarantees to secure immunity from attack and freedom for development. In the third place, the Central Powers lost a considerable amount of territory, and the partition of this territory among the many Allies might have raised troubles among the Allies. By the League of Nations a system was devised whereby the territory lost by the Central Powers is ruled by individual nations under the League itself.

The Covenant of the League of Nations forms part of the Treaty of Peace signed by the German delegates on 28th June, 1919. The Covenant contains thirty-six articles, with an annex naming the original members of the League. The original members are the ally signatories of the Peace Treaty, the new states created by it, and other states invited to join. The seat of the League is at Geneva, in Switzerland.

Membership and Constitution of the League.—The first article of the Covenant lays down the conditions of admission into the League, and of withdrawal from it. The original membership consisted of the thirty-two allied and associated powers, with the new states which signed the peace treaty, and of thirteen neutral states. All the original members were to accept the same obligations. The national sovereignty of each state was guaranteed, but it was provided that no state could withdraw without fulfilling all its inter-

national obligations and obligations under the Covenant. The right of withdrawal, subject to this condition, was granted on two years' notice being given.

The Covenant also lays down that "Any fully self-governing State, Dominion, or Colony may become a member of the League," under prescribed conditions. This article is looked upon as establishing what is practically the independence of the British Dominions. It is at least a theoretical recognition of their nationhood, but there is room for doubt regarding the scientific interpretation of "fully self-governing" as applied to a "Colony."

The Organs of the League.—The Covenant of the League also gives an outline of the machinery or organisation to be established to carry out the purposes of the League. There are four organs of the League—(1) the Assembly; (2) the Council; (3) the Secretariat-General; and (4) the Permanent Court of Justice.

The Assembly.—The Assembly is the supreme body in the League. It is composed of the official representatives of the various members of the League, including the British Dominions and India. Each state is left to decide how its representatives are to be chosen, and, according to the covenant, members are not necessarily bound by the views of their own governments. Each member of the League has one vote and may not have more than three representatives, though in actual practice the number of delegates representing some countries in the Assembly or its committees often exceeds three. The powers of the Assembly include the discussion of all matters affecting the League, the admission (by a two-thirds majority) of new members of the League, and the approval of the appointment of the Secretary-General. All decisions of the Assembly, except in certain minor matters, must be unanimous. Unanimity is insisted on to prevent dissension among sovereign states who might otherwise be forced by a bare majority to act in a way repugnant to them. It is presumed that absolute unanimity in the Assembly of the League by the moral force of such unanimity will compel states to act according to the League's desires.

The Council.—The Assembly is a large body and for the conduct of business a smaller body is necessary. This body is the Council, the executive body of the League, which originally consisted of four representatives of the "principal

allied and associated powers," with representatives of four other members of the League, elected annually by the Assembly. With the approval of the majority of the Assembly, the Council may nominate additional members of the League, whose representatives will always be members of the Council, and it also may increase the number of members of the League to be elected by the Assembly for representation on the Council. In 1922, owing to the growth of the Assembly, the membership of the Council was increased to ten, two extra seats being allotted to the smaller nations, so that six members were elected every year. In 1926 another change was made. A permanent seat was made for Germany, thus increasing the permanent seats to five, and the number of non-permanent seats was raised to nine. A system of rotation was also introduced in order to permit of more states being elected as non-permanent members. The rule was established whereby a retiring member became ineligible for re-election for three years unless specifically declared re-eligible. The rotation system however did not satisfy the demands of the smaller states for representation on the Council. In 1933, a tenth non-permanent member seat was created for three years. In 1936, this seat was continued for another three years, and another (eleventh) non-permanent seat was added for a similar period. The Council now thus consists of four permanent members and eleven non-permanent members. The Council is competent to deal with all matters falling within the sphere of action of the League or affecting the peace of the world. A member of the League not represented in the Council may be asked to send a representative to meetings when matters affecting that member are discussed. Each member of the League represented on the Council has one vote and cannot have more than one representative. Its decisions, like those of the Assembly, must be unanimous.

Council and Assembly.—When the Covenant was drafted, it was expected that the Council would become the more important body, but in actual fact the Council has been overshadowed by the Assembly, the proceedings of which attract attention in every part of the world. The Assembly has become a sort of international legislature; it has developed a parliamentary procedure both dignified and successful in operation, and, what is perhaps most important, its members usually send as delegates persons of outstanding ability and

reputation. Resolutions passed at the Assembly command international respect and receive wide publicity. The Assembly meets regularly, at least once a year, and special meetings have been summoned to deal with grave issues like the Chinese-Japanese dispute over Manchuria in 1931 and the dispute between Italy and Abyssinia in 1935-36.

Full meetings of the Assembly—known as plenary meetings—are held in the month of September. At these meetings discussions take place on the work of the League during the year, the budget is settled, and various elections, including those to the Council, are held. The meetings of both Assembly and Council are public. The plenary meetings are attended by all members of the "delegations" from the various members. For the conduct of business the Assembly divides itself into Committees, on which every member has the right to be represented by one delegate: these Committees are six in number—(1) juridical, (2) technical organisations, (3) disarmament, (4) budget and staff, (5) social questions and (6) political questions and admission of new members. The Council is responsible for the executive work of the League. It supervises the work of the League Secretariat, arranges appointments to committees, and the summoning of conferences, and deals with reports from subsidiary organs of the League, of which there are several, dealing with a variety of subjects.

The Secretariat-General.—The Secretariat-General, the seat of which is Geneva, consists of a Secretary-General, and such staff as is required. The Secretary-General (except the first who is nominated in the annex to the Covenant) is appointed by the Council with the approval of the majority of the Assembly, and the staff of the Secretariat-General is appointed by the Secretary-General and Council. The expenses of the Secretariat are apportioned among the members of the League. All representatives of the members of the League, and officials engaged on the official business of the League, enjoy the usual diplomatic privileges and immunities, as also do the buildings and property of the League. The functions of the Secretariat are to keep all records, procure information, and conduct the official correspondence of the League. Every treaty or international agreement entered into by any member of the League must be published by the Secretary-General, otherwise it is not valid.

The Permanent Court of International Justice.—In the Covenant, the Council was directed to formulate a scheme for a Permanent Court of Justice, to adjudge upon international disputes referred to it. The Permanent Court of International Justice consists of fifteen Judges, chosen for their high legal attainment ; it sits at the Hague, and delivers opinions and judgments on all disputes regarding International Law, breaches of international obligations and the interpretation of treaties. The judges are elected jointly by the Council and Assembly, for a term of nine years. The International Court has dealt with between forty and fifty disputes, some of a very important character. It has achieved a high reputation with both governments and jurists. The Court sits all the year round.

Prevention of War.—A large part of the Covenant of the League of Nations is taken up with measures for the prevention of war. The prevention of war, indeed, is really the main reason for the existence of the League. The measures are :—

1. Limitation of armaments. The principle is recognised that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and common action necessary for the enforcement of international obligations. The making of munitions of war must also be limited. The Council, and a permanent Commission, is empowered to advise and draw up plans on this subject, these plans being revised decennially.
2. The members of the League mutually guarantee the territories and independence of the existing members of the League.
3. The Covenant lays down the principle that any war or threat of war, whether immediately affecting the members of the League or not, is a " matter of concern " to the whole League, and that it is the duty of the League to take such steps as will guarantee international peace.
4. The members of the League agree not to go to war till the matter in dispute has first been submitted to arbitration.
5. The Covenant gives also an outline of the machinery by which peaceful settlements may be effected. The Council, Assembly, and Court of Justice all have a part in this machinery. In the settlement of disputes publicity plays a considerable part. All points at issue are to be made public,

and the peoples of the various countries informed regarding the dispute. Where individual states refuse to abide by the decision of the League, i.e., where an "act of war" against the League has been committed, the duty of recommending coercive measures is laid on the Council. The final measures contemplated by the League are the use of the League's forces, but in cases where sudden action is required, the individual states may take action.

6. The League also lays down the principle that no state, whether a member of the League or not, has a right to disturb the peace of the world. Executive action in cases of disputes between states not members of the League among themselves or between them and members of the League, is left to the Council.

The Mandatory System.—The mandatory system is the result of the War. Considerable sections of the defeated countries—such as Armenia, Syria, Mesopotamia, German South-West Africa, and the German Pacific islands were seized from the vanquished states. The question arose as to how they should be governed. The general principles accepted by the League are set forth in these words (Article XXII)—

"To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the states which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation, and that securities for the performance of this trust should be embodied in this Covenant.

"The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who, by reason of their resources, their experience, or their geographical position can best undertake this responsibility, and who are willing to accept it and that this tutelage should be exercised by them as Mandatories on behalf of the League.

"The character of the mandate must differ according to the stage of development of the people, the geographical situation of the territory, its economic conditions, and other similar circumstances."

The principles accepted were three :—(1) That none of

these conquered territories should be "annexed" by any one power; (2) that the administration of these territories should exclusively be vested in the League; and (3) that the League could delegate its authority to one state, which would be its agent or "mandatory," and which, if it did not perform its duties acceptably, could be replaced.

Amendments to the Covenant.—The constitution of the League is made very flexible. Amendments to the Covenant are valid when ratified by the members of the League whose representatives form the Council of the League, and by a majority of the members of the League whose representatives compose the Assembly. If any member dissents from an amendment, it shall not be bound by it, but in this case it must give up membership of the League.

The International Labour Organisation.—The Covenant includes other important clauses relating to future and existing treaties, and conditions of labour. With regard to labour, a special body was created, the International Labour Organisation, which is an autonomous body within the League. The object of this Organisation is to secure better conditions for labour among the members, and though its work has not received the same public attention as that of the League, it has been very comprehensive and effective. The International Labour Organisation consists of the International Labour Conference, which meets at least once a year, in Geneva, and the International Labour Office, which is controlled by a Governing Body. The Conference is composed of delegates of governments, employers, and workers. The Governing Body is likewise composed of government, employers' and workers' representatives; the government representatives are equal in number to those of the employers and workers together.

The International Labour Conference discusses labour questions of all kinds, and its decisions are promulgated in two main forms—Draft Conventions, and Recommendations. These Draft Conventions and Recommendations are forwarded to the member states, which may or may not accept them. In the case of Draft Conventions, formal ratification is communicated to the Secretary-General of the League; in the case of Recommendations the Secretary-General has to be informed of the action taken.

During its existence, the International Labour Conference

has passed a large number of Draft Conventions and Recommendations. A considerable proportion of these has been ratified, or acted on by individual governments ; but in many cases, no action has been taken. On the other hand, the International Labour Conferences have had considerable influence in encouraging progressive labour legislation all over the world. The process of ratification usually involves discussion of the Conventions in the legislature, and this in itself gives publicity to the work of the Organisation, and lays the responsibility on the executive for refusing to ratify. The International Labour Organisation, like the League, has also gained much prestige through the publications of its office. The International Labour Office has achieved the unique position of being the chief repository of information on labour matters in the world.

Work of the League.—The League of Nations has three chief functions—the settlement of international disputes, removal of the causes of war, and the organisation of international co-operation. As regards the settlement of international disputes, a duty which is laid on the Assembly, Council and Permanent Court, it may be said that, while a large number of smaller disputes have been settled, the League has been powerless in graver matters, such as the Chinese-Japanese dispute over Manchuria and the quarrel of Italy and Abyssinia. These disputes issued in war, which the League could not prevent. The League also has been unsuccessful in its attempts to remove the causes of war. Conquest and "colonial" expansion, and secret alliances, forbidden in the Covenant, have not disappeared. The League's attempts at general disarmament have also failed, but similar failure has to be recorded of the attempts of individual governments. As regards international co-operation, the League has had conspicuous success. The work of international co-operation is done mainly through the secondary organisations of the League, dealing with health, communications, opium control, and intellectual, social and humanitarian work. These technical and social organisations have built up codes which are of paramount importance in international co-operation, and important practical results have accrued.

The main antagonistic forces with which the League has had to contend are the intense national feelings generated

in Europe in the so-called totalitarian states—Germany and Italy. Both these countries ardently desire colonial expansion. Germany wishes to regain her overseas possessions, lost in the Great War. Italy needs room for her dense population. The same is true of Japan. These countries are all equally opposed to the spread of communism, and common action between them and Russia seems impossible. The result has been the withdrawal of Germany, Japan and Italy from the League, and this, added to the fact that the United States of America never joined it, greatly weakens its international character. Further, economic nationalism has become very prominent since the Great War. In spite of its best efforts, as at the Economic Conference in 1927, the League has been able to make no appreciable progress in the removal of tariff barriers. On the other hand, the League has established itself as a body which commands international respect, and which no government lightly disregards. It is true that its failure to prevent war has led to hasty conclusions in several quarters as to its utility ; but it is equally true that the mass of educated opinion outside the countries which have declared war has been more impatient with them than with the League. The League has achieved marked success in many of its efforts at international financial settlement, as witness its reconstruction schemes in Austria, Hungary, Bulgaria and Greece ; it has also laid the basis of international co-operation in many other spheres. Most important of all, it is gradually bringing into being new conceptions of international duty and obligation.

11. THE UNIVERSAL STATE

Many present-day thinkers favour the abolition of single states and advocate the establishment of an International or Universal State. The idea of a universal state goes back to Greek philosophy, but only in the modern world have these ideas become prominent as actual practical issues. There are many indications in the modern world that the organisation by individual states is breaking down. The Great European War in particular has shown that modern national states are a danger both to themselves and humanity, and that some means should be developed to organise states on an international basis. The first real approach towards a universal state is the League of Nations.

The evidences favouring the idea of a universal state are many. We may sum them up thus :—

Evidences in favour of a Universal State. 1. Philosophical.—Some philosophers state that in human nature there are two tendencies, one particular and one universal, or one personal and one social. The particular tendency of man's nature is shown in practice by organisation in small groups—tribes, clans, etc., while the universal part of his nature demands manifestation in the organisation of mankind as a whole. Such philosophers, too, point out that in all states there are the same characteristics, which are emblems of universal similarities in human character. The nation, though it may be necessary at a particular stage of social evolution, is only a halting place on the road to a universal state, which will be the most complete and perfect embodiment of the human spirit. Just as the particular tendencies in man have made him organise in groups, the universal tendencies, which are stronger, will abolish group differences and unite man in one body.

2. **Historical.**—History shows us that though there is no universal state, there have been real attempts in the past to organise mankind as a whole. The most important attempts have been :—

(*a*) The Empire of Alexander the Great. Alexander tried to unite the east and west in one empire, but he died before he could establish his empire on a firm basis. His empire applied only to what was then regarded as the civilised world. The conflict of ideas between the Macedonians and Greeks, the mixture of races, and the lack of general enlightenment prevented lasting fusion.

(*b*) The Roman Empire. The Roman Empire stretched over the whole world, as understood in those days. Founded at first by conquest, the Empire was gradually welded together by a common organisation, local government, and a common system of law. The Roman Empire broke up because of the resistance of the Teutons. Roman institutions did not harmonise with Teutonic ideas. The Roman Empire, however, left a permanent mark on the world, chiefly through its legal system.

(*c*) The Holy Roman Empire, which succeeded the Roman Empire. The idea of a universal state was encouraged by the universality of Christianity. The Holy Roman

Empire broke up because of the struggle between the Emperor and Pope, and the development of parts of the Empire into nation states.

(*d*) Napoleon tried to establish a universal empire. Not only did he fail to achieve his purpose, but he kindled the modern fires of nationality, which culminated in the Great European War. His method was conquest, the method by which the late German Empire hoped to achieve world dominion. Brute force, however, has never proved a lasting basis for states.

History also shows that historical development moves from smaller groups, such as the Greek and mediæval Italian city states, to larger groups, such as modern nation states and empires. At the present day, though the rights of small nationalities are to be respected, their existence can be guaranteed only by a League of Nations, which is really the first approach to an international state. The evolution of history, therefore, it is said, is leading us to a universal state.

3. **Political.**—Even with the various antagonistic groups or nations of the present day the existence of treaties, leagues, and diplomacy generally shows the possibility of a permanent and complete league which will ultimately abolish the sovereignty of individual states and lead to the universal state.

4. **Commercial.**—With modern means of communication the interests of different nations are so bound up with each other that self-interest urges the abolition of organisations which lead to war and destruction. The whole economic world is a delicately constructed machine which can work properly only when there is no danger of sudden crises arising from war or rumours of war. With the growing complexity of economic life, nations are not self-sufficing ; they are interdependent, each one producing what it is best fitted for and supplying others with those things that they themselves cannot produce.

5. **Industrial.**—The manual workers of the various nations of the world are gradually recognising their common interests, and are organising themselves accordingly. Thus there are international organisations affecting trade-unions. Socialism is founded on an international basis and it has deeply affected not only the workers but the higher classes. These international organisations, it is pointed out by many, already show that state-organisation is in the process of decomposition.

6. **Legal.**—The legal aspect of the universal state has already been mentioned in connection with international law. International law, though not law in the ordinary sense of the term, is law in the making. The common will to enforce it like ordinary law is gradually being formed.

7. **Moral.**—This is seen in the growing tendency for nations to interfere in the affairs of other nations, to protect oppressed peoples, or to prevent wrong.

8. **International.**—International, social and cultural. In the modern world there is, it is pointed out, much intellectual sympathy shown between the peoples of different nations, particularly in university work, where learned men work at similar problems and use each other's results. The increased study of social and political institutions of all countries also leads to intellectual sympathy. Then, again, there is the contact of what is known as "high society"—citizens of one country living as guests or citizens in other countries, or travelling in other countries. In this way a common understanding of each other's institutions and national characteristics is spread. This leads to a certain cultural community among mankind that in time will break down the intolerance between men which at present makes them organise in separate and often antagonistic groups or states. In this connection it is also pointed out that religion and language, as barriers to inter-communication, are also breaking down. Religion more and more is tending to be separated from politics and left to the individual conscience. Newer states grant universal toleration in religion and old states are tending to do the same. With advancing education, the citizens of one country learn the languages of others. Some languages, such as English, are learnt almost universally. The attempts to start a new language such as Esperanto as an international common language are indications of the same universal community.

These various tendencies, it is said, are indications of the formation of a universal state. Just as individual states are based on the minds of the citizens composing them, so the universal state will be based on a new type of mind, of which these various points are evidences. It will take a long time for these tendencies to develop the homogeneity necessary for international union, but that they will do so ultimately is not doubted.

Arguments against the Universal State.—The various

arguments produced to prove the coming of a universal state seem to give good ground for the belief that the present political system of the world is only temporary. Many arguments have been voiced against the idea, but on examination they prove somewhat illusory.

1. **That it Will Abolish Individual Liberty.**—One argument is that a universal state will abolish individual liberty. A vast organisation, it is said, is not compatible with the free development of the individual. Against this it may be pointed out that the universal state will not affect the ordinary lives of individuals. Its organisation will affect only the most general interests of individuals. The universal state will not mean uniformity of organisation. Groups will still continue to be organised separately within the world state, just as local government in modern states co-exists with central government. The international state will look to only such general interests as universal peace, freedom of commerce, and freedom from oppression of groups by groups. The universal state, moreover, need not interfere with matters of religion and private association any more than modern advanced democratic states do. The individual will continue to live his life as now, but his life will be guaranteed to him by the absence of wars.

2. **That it Will not Last.**—It is argued that either the universal state must be a monarchy or that, if organised, it will break up again into separate and opposed groups. There seems little force in this argument, for all modern political tendencies, even in individual states, are away from monarchy. The rapid spread of the federal idea in state organisation also points to a probable type of organisation. Federalism is a system of government which reconciles local claims with the claims of central government, and its popularity in recent years points to its likely success as an organisation of a universal state.

3. **That the World is not Fitted for it.**—It is impossible to have a universal state till the various peoples of the world have reached approximately similar standards of development. This argument is a most powerful one against a universal state *in the immediate future.* But very few, even though they believe in the idea and ultimate possibility of a universal state, think it can be realised in a few years or even in a few centuries. Till the peoples of the world are educated,

they will fail to understand each other, and such lack of understanding will lead to conflicts. A universal state is only possible where there is a universal mind underlying it, and it will take a long time for all people to be so enlightened as to give reason sway over passion.

Even with the existence of unenlightened peoples a universal organisation is possible, the less enlightened for the time being under the guardianship of the more enlightened. In the British Empire there are many millions of ignorant and barbaric peoples, but their existence need not prevent the Empire organising with other powers for common purposes.

4. **That a Universal State is Not Really a State.**—The universal state is really no state. The very existence of a universal state is tantamount to saying that every individual is so perfect that he is a law to himself. This may be the ultimate social ideal, but whether it is possible is quite another question. Even with his imperfections it is possible to organise man in a universal state, with law and government much the same as exist now. The ultimate moral destiny of mankind may be the moral perfection of all men, with perfect social union, perfect institutions and perfect freedom. To this the international state will be a step ; it is a higher manifestation of man's nature, but even with imperfections in man it is possible.

CHAPTER IX

CITIZENSHIP

1. THE MEANING OF CITIZEN

Literal Meaning of Citizen.—The word citizen literally means a resident in a city, or a resident in a city who enjoys the privileges of such residence. Thus we speak of citizens of London or Calcutta, meaning those persons who reside in these cities or exercise the rights which membership of the cities confers. In this sense the word citizen is equivalent to the Greek word *polites,* which meant a member of a *polis*

or city. This is a very restricted and specialised use of the word.

Citizens and Aliens.—In its widest sense the word *citizen* is opposed to *alien.* People residing within the area of a state are divided into two classes, citizens and non-citizens or aliens. A citizen of a state is one who lives in the state and is subject to the state in all matters. Citizens owe their allegiance to the states in which they reside. Aliens owe allegiance to another state. Aliens must, of course, obey the ordinary laws of the land in which they reside, and these laws may also include regulations which are made by treaties between the country of the aliens and the country in which they reside. Aliens receive the protection of the law for their person and property in the state they inhabit, and for such protection they must obey laws even though they be different from those prevailing in the state to which they owe allegiance. The alien inhabitant must also, as a rule, pay rates and taxes according to the ordinary methods prevailing in the state or local area, but aliens do not receive political privileges. The privileges of voting, of election for public bodies and the holding of public offices are generally denied them.

Citizen and Subject or Resident.—The privileges of citizenship may be divided broadly into two classes : (*a*) general protection of the law, and (*b*) the right to vote in elections, the right to be elected, or to be appointed to public office—what may be called the political privileges of citizenship. In popular speech two senses of the word citizen are often confused owing to lack of discrimination between these two classes of privileges. In one sense, citizen is used to mean all those who reside in a state, enjoy the protection of its laws, and also the political privileges. In another sense, citizen is confined to those only who enjoy political privileges. In modern democracies every one is theoretically equal before the law but not every one is allowed the privileges of citizenship. In Britain, for example, minors, and a certain number of adults, men and women, who have not a residential or property qualification, have not the privilege of the vote. In some other countries a distinction is made between those who are literate and those who are illiterate, as in some of the American states, where illiterate persons are not allowed to vote. In other states people who do not pay a certain amount of taxation are not allowed to

vote, and in all states those who are of unsound mind and those who are habitually criminal are excluded from the political privileges of citizenship.

A distinction is sometimes made between *subject* or *resident* (the wider sense) and *citizen* (the narrower sense).

Classes of Citizens.—There are two classes of citizens : (1) citizens by birth or natural citizens, and (2) citizens by adoption or naturalised citizens. Naturalised citizens are those who come from another state and choose to give up their "natural" citizenship of that state and adopt the citizenship of the state in which they have come to reside. The rules governing naturalisation vary from state to state. Generally speaking, natural citizens have superior rights to naturalised citizens. Naturalised citizens are often excluded from holding the highest offices of state. For example, the office of President of the United States can be held only by natural-born citizens. The citizen whose whole traditions belong to the state may be expected to be a more loyal member than one whose birth and traditions are of another state. Accordingly, it is safer to allow only natural-born citizens to occupy those government posts which demand the greatest loyalty and patriotism in service.

2. THE ACQUISITION OF CITIZENSHIP

Methods of Acquiring Citizenship.—Citizenship may be acquired in several ways, viz.—

(1) Birth, which usually means birth within the country, but which may also be taken in a wider sense, e.g., according to English law birth in an English ship or in an English embassy is equivalent to birth in England ;

(2) Marriage, whereby an alien wife becomes a member of the family and state of her husband ;

(3) Naturalisation.

The first and chief mode of acquiring citizenship is by birth. There are no uniform rules in the different states in this matter. Some states, e.g., Germany, Sweden and Switzerland, have adopted the rule that descent alone is the decisive factor. This is called *ius sanguinis,* or the rule of blood-descent. According to this rule, a child, whether born within the state or in a foreign country, becomes *ipso facto* by birth a citizen of the parent state. Other states, such

as Argentina, have adopted the *ius soli*, or the rule that the territory on which birth occurs is exclusively the decisive factor. According to this rule, every child born on the territory of such a state, whether the parents be citizens or foreigners, becomes a citizen of the state, whereas a child born abroad, even although the parents may be citizens, is an alien. Other states, such as Great Britain, the United States and France, have adopted a mixed principle. According to the law of Great Britain and the United States, not only children of subjects born at home or abroad (*ius sanguinis*), but also children of foreign parents born on their territory (*ius soli*) become citizens. The French law considers children of French citizens born abroad to be French. Children of foreigners born in France, unless within one year after attaining majority they choose the citizenship of their parents, are also regarded as French citizens.

The Principle of Birth-place.—The rule of birth-place is the principle of Roman law. Its simplicity is its chief merit. But birth alone is not a fair test. In the modern world particularly the place of birth is frequently accidental. A child may be born when its parents are touring throughout the world, and it is obviously unjust to compel that child to adopt the nationality of the state in which it happens to be born. It would be not only unjust but ridiculous to regard the child, say of an English officer who happens to be staying in Germany with his wife when his child is born, as a German citizen.

The most equitable rule is that of kinship or blood. Its chief difficulty lies in the complications that arise in proving the nationality of the parents. The English and the American rule is the old feudal rule of the place of birth, but it is frequently found necessary in each case to modify the legal rule by the application of commonsense principles.

Naturalisation.—The most important mode of acquiring citizenship besides birth is that of naturalisation in the wider sense of the term. Through naturalisation a person who is a foreigner by birth acquires the citizenship of the naturalising state. According to the law of different states naturalisation may take place through—

(*a*) *Marriage.* A foreign woman marrying a subject of a state becomes thereby *ipso facto* naturalised ;

(*b*) *Option.* Children born of foreign parents, after coming of age, may choose to be members of the state in which they were born, and thus be naturalised ;

(*c*) *Domicile.* Some states allow a foreigner to become naturalised by his taking his domicile in their territory ;

(*d*) *Appointment as a government official.* Some states let a foreigner become naturalised *ipso facto* on appointment as a government official ;

(*e*) *Grant on application.* In all states naturalisation may be procured through a direct act on the part of the state granting citizenship to a foreigner who has applied for it. This is naturalisation proper ; it implies the reception of an alien into the citizenship of a state through a formal act. The object of such naturalisation is always a foreigner who, if naturalisation is granted, becomes a citizen of the naturalising state. The government which grants naturalisation may prescribe such conditions as it likes.

Conditions of Naturalisation.—One of the most usual conditions is residence for a set period of time. Some states lay down more conditions than others, but every state requires the fulfilment of some kind of conditions. Sometimes naturalisation is only partial, that is to say, while a naturalised citizen may receive the ordinary benefits of citizenship such as protection of person and property both in the country in which he is naturalised and in other countries where his interests are looked after by the representative of his adopted country, at the same time he may be excluded from occupying the chief posts in his country of adoption. Thus in the United States the President and Vice-President must be natural-born citizens of the United States. In France and Belgium a distinction is made between ordinary naturalisation and "grand" naturalisation. Only by grand naturalisation can an alien be made politically equal to a natural-born citizen, and grand naturalisation can only be granted when a specific number of conditions are fulfilled. Ordinary naturalisation is granted on easier conditions.

In Great Britain there is a distinction between naturalisation and denization. Naturalisation is the result of an

Act of Parliament; denization is conferred by the executive. Naturalisation in Great Britain confers upon an alien the same rights as are possessed by natural-born citizens, whereas a denizen possesses those rights only partially. In the ordinary affairs of life there is not much difference between the two. But in certain matters the denizen is restricted, particularly in public life. He cannot be a member of the Privy Council or of either House of Parliament, occupy any high public office, or take a grant of land from the Crown.

Other Methods of Acquiring Citizenship.—When a foreign territory is incorporated under a state, sometimes citizenship is conferred wholesale on the basis of residence on the newly acquired territory. In this way the citizens of the acquired territory become citizens of a new state. They have a new allegiance and new political obligations, but their relation to one another in private matters remains the same as before; in other words, their public law is changed and their private law remains the same. There are many historical examples of such transfer of citizenship. Florida, Louisiana, California and Alaska were all annexed by the United States and at the time of annexation arrangements were made to admit the citizens to the full rights and privileges of the United States.

Sometimes when territories are ceded from one state to another the inhabitants retain their original citizenship, but this must be specially recognised in the act of cession, otherwise they would become citizens of the superior state.

The Results of Citizenship.—The results of citizenship are matters partly of private, partly of public law. In private law, as a rule, citizens and aliens are alike regarded as possessing full rights. In the sphere of public law, however, the distinction between the two is fully maintained. The following rights, except in case of special grant, are confined to citizens—

(*a*) the right of permanent residence in the country;
(*b*) the right to the protection of the state, even if the citizen is staying abroad;
(*c*) the exercise of the franchise;
(*d*) the right to hold public offices;
(*e*) sometimes such general political rights as those of association, petition or free publication.

This does not mean that aliens are absolutely excluded from the exercise of these rights; it means only that they

enjoy them on sufferance. Full citizenship implies membership in the nation and complete political rights; it is thus the fullest expression of the relation of the individual to the state.

Loss of Citizenship.—Citizenship may be lost in various ways according to the laws of the country in which citizens are domiciled. A woman may lose it by marriage with an alien. Service under an alien government may lead to the loss of it. Desertion from military service, acceptance of foreign decorations, judicial condemnation for certain causes, all lead to the loss of citizenship in the various states of the world. A very usual cause of the loss of citizenship is long continued absence from the country of birth or adoption. The laws of several states declare that if a citizen is absent for a specified period of years and does not declare his intention to continue his citizenship, it automatically lapses.

The most common method of losing citizenship is voluntary resignation and adoption of new citizenship. In this matter, as in most others, the laws of states vary exceedingly. Some states completely deny the right of a citizen to resign his citizenship under any circumstances. Others allow the right of resignation under certain stringent conditions. Others allow a temporary withdrawal of allegiance so long as the person concerned is residing in another territory. Several states refuse the right to resign citizenship to any males of requisite age who have not performed military duties.

The modern tendency in matters of citizenship is to recognise the right to adopt a new citizenship if the individual so wishes. The English theory used to be that an Englishman always remains an Englishman unless with the consent of the Crown he definitely renounces his allegiance. The consent of the Crown was necessary, otherwise, in the eyes of the English law, no act of a foreign government could change an Englishman's nationality. In 1870 the British Government gave up the old theory and made a general rule that any British subject voluntarily naturalised under a foreign government should cease to be a British subject.

Most states allow for a naturalised citizen returning to his own country, i.e., for the reversal of naturalisation; they allow for repatriation after expatriation.

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3. DUTIES OF CITIZENSHIP

The state, with government, exists to further the general good of the community. But the state and government are not something apart from the citizens of the community. The attitude of many citizens seems to be that government is a tyrannical machine, especially invented for oppression. It is not ; it is the machinery of the state, which consists of individuals and exists for them. In modern democratic countries, where government is accused of oppression, mismanagement, etc., in all likelihood the citizens themselves are at fault. The purposes of the state are their purposes, and if the state is to serve its purpose properly citizens must fulfil their civic duties. The errors of government may be many, but the neglect of their civic duties by citizens is much more marked. Were the energy spent in destructive criticism of government spent in real constructive work, in the proper fulfilment of the duties of citizenship, there would be much less cause to carp at the acts of government.

Obedience.—The chief duty of each citizen is obedience to the law. If one citizen disobeys, and is not punished, then other citizens may also disobey the law. If all citizens disobey the law, then the law practically does not exist and the individuals are living without the benefit of the state. The interests of the state are the interests of the community. The interests of the community are greater than the interests of any one individual. Laws exist in order to further the interests of the community. Obedience to the laws, therefore, is one of the most necessary things for securing the interests of the community as distinct from the interests of individuals. It may indeed sometimes appear hard that an individual should be punished, but the fact remains that punishment for breaking the law is the chief instrument in the hands of the community for preserving its own interest, and individual interest must always be sacrificed to the general interest.

Allegiance and Service.—Another duty of the citizen is allegiance to the state. Allegiance means that the individual gives his whole-hearted service to the state. This implies many things. In the first place, allegiance implies the duty of defending the state against danger, if the state is involved with another state in war. It means that the individual

must serve the state in the way most suitable for the defence of the state. For able-bodied men this service as a rule takes the form of military service. The individual must be prepared to sacrifice his own life for the state. In most states military service is compulsory, that is to say, each male citizen, when he reaches a certain age, is called upon to undergo a period of military training in order to fit him for active military service, should necessity arise. If the individual deserts from the army or refuses to perform the duties for which he is called upon, he may be either imprisoned or deprived of his citizenship. In some countries, notably Great Britain, the voluntary military system prevails. There is a standing army in peace time which is recruited on the voluntary principle. In cases of emergency, as in the Great War, it may be found necessary to introduce compulsory service.

Support of Government.—Another form of service which citizenship implies is the support of the public officers in the performance of their duty. It is the duty of every citizen to support the police and legally constituted authorities in the suppression of riot and revolution. In fact, in Great Britain it is a legal duty of every citizen to support the authorities in preserving the public peace, and a citizen is liable to punishment if it can be proved that he deliberately refrained from discharging his duty. It is also the duty of citizens to refrain from disturbing the public peace, to refrain from instigating riots, sowing sedition or disturbing peoples' minds against the authorities. As the state and government exist for the common good, it is impossible to expect that individuals with grievances will not voice their grievances, but in voicing their grievances citizens should always proceed in the ordinary constitutional method which the law of the land allows. It may happen, of course, that the existing type of government may render it difficult to voice grievances, but it must be kept in mind that the destruction of government by revolution or rebellion always brings greater evils than it suppresses. The most recent example is Russia. Practically everybody in Tsarist Russia admitted that the machine of government required remaking, but instead of remaking it in an orderly and constitutional way, the revolutionaries smashed it to pieces. The evils of the revolution were a

millionfold worse than those of the old system. For many years Russia was a civil battlefield ; there was no security of person or property. Liberty was ruthlessly repressed ; force and fear were the instruments of the new regime, which was an autocracy much more rigid than that which was abolished.

Other Public Duties.—Allegiance also demands from the citizen the giving of his service for public duties such as holding public office and recording his vote. In modern democracies most citizens above a certain age possess a vote. Not every one can occupy a definite public office, but every one who is physically able can vote. It is a fundamental duty of the citizen in a modern democratic country to record his vote even if he does not aspire to office. The government rests on the will of the people, and unless the people express their will through their vote, then they cannot complain if the government is not conducted according to their own desires. The duty of voting is a simple and effective duty, but in a properly constituted state it implies something more. It implies that the citizen should be a student of public matters, that he should acquaint himself with the problems of the day, and, by close study of the problems, train himself to be as judicial in his decisions in political matters as he should be if serving on a jury in a law court.

In many countries in bygone days public duty of some sort was compulsory for every citizen. For example, in some rural communities (areas of local government) each citizen was forced to give certain days of the year for service on the public roads. This has now disappeared, but it has been replaced by two things—(1) voting for public bodies, and (2) the payment of taxes.

Payment of Taxes.—Public bodies have to perform certain functions for the community and these functions must be performed in the best possible way. Public officers have to arrange for the various public works for which they are elected, and in order to do so they must levy taxation. For the central government the money is raised in various ways, by income-tax, customs duties, excise duties, etc. For local government the taxation (called rates) is levied according to the requirements of the local areas. In this way citizens are able to commute the old service that they had to perform. A permanent staff of officials and workers is kept at the public expense for the performance of public duties.

A little consideration will show that if there were no taxation there could be no government. Government servants must be paid, government agencies conducted ; and if the people agree that government has to perform certain things, then they must also provide ways and means. They must, therefore, admit the right of the state to levy taxes, or, if necessary, even to confiscate private property for the public welfare.

Of course, every government tries to apportion its taxation among the people as fairly as possible. To tax one class at the expense of another, or to tax one industry or trade at the expense of another, would be unfair. It is a very difficult matter for government to apportion its taxation satisfactorily. Everybody, whatever his status in society, complains when he has to pay taxes, and the government must do its best in order to make these complaints as unimportant as possible, or, on the other hand, to prove to the complainants, if necessary, that they have very little grounds for complaint.

The duties of government towards citizens are not fixed. Some people (called individualists) think that government interference should be limited to the protection of person and property. The opposite school (called socialists) think that government should undertake the management of every branch of social activity. As modern governments rest on the minds of the people themselves, it depends on the type of minds at any particular time whether the government is individualistic or socialistic. Before the Great War government did not interfere in any marked degree in industry and commerce. During the Great War government found it necessary to interfere in many ways not only in industry and commerce but in the private life of the people. The circumstances of the case justified the interference. As soon as the war ended, the cry arose among a large section of the community for the withdrawal of government interference ; by others, the extension of government interference was asked. A large section of miners and railway-workers are now demanding that government should take over the management of railways and the management of mines. The future activity of government in this direction will be determined by the public interest and the mind of the people, as shown at periodical elections.

CHAPTER X

THE CONSTITUTION OF THE STATE

1. DEFINITION AND CLASSIFICATION

Definitions of Constitution.—The constitution of the state may be defined as the fundamental rules which regulate the distribution of powers in the state or which determine the form of government. Austin, the law-writer, calls it "that which fixes the structure of the supreme government." Lewis, the well-known English writer on Political Science, calls it "the arrangement and distribution of the sovereign powers in the community, or form of government." This is practically a direct reproduction of the definition of Aristotle, who says that the constitution is the way in which citizens, who are the component parts of the state, are arranged in relation to one another.

The constitution of a state is that body of rules or laws, written or unwritten, which determines the organisation of government, the distribution of powers to the various organs of government, and the general principles on which these powers are to be exercised. Every state must have a constitution. It is true that some constitutions may be more clear and more developed than others; but wherever there is a state there must be certain fundamental rules or principles governing the exercise of power in the state. Even in what we know as "advanced" states the constitution may be somewhat indefinite. Thus in Great Britain it is difficult to say what exactly is the constitution. Nevertheless, the constitution exists. It is impossible to conceive of a state in which there is no constitution.

Classification of Constitutions: Written and Unwritten.—The traditional classification is *written* and *unwritten* constitutions. The distinction between the written and the unwritten constitution is founded on the distinction between written and unwritten law, or between statute and common law. This distinction, however, is not satisfactory. An unwritten constitution is one which is based on custom or usage; a written constitution is one which has been definitely enacted in a single legal instrument. On examining constitutions of these two types we find that in unwritten constitu-

tions a large number of customs are definitely written down, and that in written constitutions, however definite they may be, there is always an unwritten element, an element of custom or usage. In the unwritten constitution, a custom, once written down, is as important as an enacted law. In a written constitution the element of custom is as important as the constitution which is written. The distinction, therefore, between written and unwritten constitutions is not satisfactory; but it has been widely accepted because of the difficulty of finding any other basis of classification. The classification *evolved* and *enacted* is adopted by some writers, the evolved constitution being practically the same as the unwritten constitution, and the enacted the same as the written. Sir Henry Maine classifies constitutions, as, firstly, historical and evolutionary, that is, constitutions which have developed gradually according to historical experience, and, secondly, *a priori,* that is "founded on speculative assumptions remote from experience." Of the historical and evolutionary type, the constitution of Great Britain is the chief example. Of the *a priori* type, the constitutions of France of the eighteenth century are examples; these constitutions were drawn up according to certain preconceived ideas of justice.

Lord Bryce's Classification.—The most satisfactory basis for the classification of constitutions has been given by Lord Bryce in his book, *Studies in History and Jurisprudence.* Bryce classifies constitutions as flexible and rigid. His argument is as follows:—

His Basis of Classification.—Constitutions, past and present, are of two leading types. Some are of natural growth, made up of enactments, understandings, and customs which have practically the same force as enactments. They are largely an accumulation of traditions and precedents, and, as a rule, are unsymmetrical and unwieldy. Others are the work of conscious art. Such constitutions are contained in one legal instrument, which has been drawn up at one time by a definite body. These constitutions might be distinguished as *old* and *new* types, or they might be called *common-law,* constitutions and *statutory* constitutions; but the latter description is open to the criticism already given in connection with written and unwritten constitutions.

Bryce himself takes as the basis of distinction the relation

which each constitution has to the ordinary laws of the state and to the ordinary authority which passes these laws. In some states the constitution is subject to the same machinery as the ordinary laws of the land. In such cases the term "constitution" simply means those statutes and customs of the country which determine the form of government and the arrangement of the political system. It is often difficult in this case to say what is constitutional and what is not constitutional. Some statutes, while containing definite constitutional matter, at the same time may contain much that is not constitutional, and other statutes which at first sight seem to have nothing to do with constitutional usage, may in reality contain important constitutional matter.

In other states, the constitutional legislation in the state is subject to a special process. In this case constitutional law is clearly demarcated from ordinary statute law. The constitutional law is passed by a special authority and can be amended only by a special authority, and, further, if the ordinary law of the land conflicts with constitutional law, the ordinary law must give way.

Flexible and Rigid Constitutions.—Bryce adopts the terms *flexible* and *rigid* to describe the nature of these two types of constitution. The one type is called flexible because it is elastic, and can be bent in various ways, and still retain its main features. The other is called rigid because it is definite and fixed. The flexible type is the earlier in date. In the other classifications mentioned, it is equivalent to the unwritten, the evolved, or historical. In the modern world flexible constitutions have almost died out. The one notable example is the constitution of the United Kingdom. Austria-Hungary had a flexible constitution before the Great War. Italy also used to have a constitution which is half-way between the flexible and the rigid types.

The rigid constitution has been adopted by practically all modern states, with, of course, the conspicuous exception of Great Britain. The Dominions and India have all rigid constitutions, though a considerable amount of flexibility has been given to the Dominion constitutions by the Statute of Westminster. The constitutions of all the Dominions (except Eire) and of India are really Acts of the Imperial Parliament, which is the legislative sovereign of the Empire. Parliament, however, has by statute given constitutional powers to the

Dominions. These powers have already been used, as in the case of the Irish Free State, now Eire.

"No British Constitution."—The well-known writer on British and American constitutional practice, De Tocqueville, says: "Technically there is no British constitution." This remark has often been quoted carelessly by speakers and writers, as if it were a discredit to Great Britain to have no constitution. What the statement means is that in Great Britain there is no definite constitutional enactment such as exists in the United States or France. But that there is no constitution at all is far from the truth. Great Britain has a flexible type of constitution. Both constitutional and ordinary law can be enacted and amended by the same legislative process. It is true that no lawyer can definitely put his finger on any enactment or number of enactments that can be said to form the British constitution; but that does not mean that the constitution does not exist.

The British Constitution.—The British constitution consists of a mass of documents and enactments such as the Great Charter, the Bill of Rights, the Habeas Corpus Acts, the Petition of Rights, the Act of Settlement, the Reform Acts (1832-1928), various municipal Acts, local government Acts and Acts concerning the organisation of the law courts. All these Acts are of a constitutional character, as also are laws affecting the relationship of the Imperial government and the dependencies, e.g., the Statute of Westminster, 1931. There are other Acts, such as the Scottish Universities Act, which, though primarily educational, ecclesiastical or municipal measures, really contain important constitutional matter. In addition to these enactments there is a large number of customs, traditions and precedents in the British constitution. The whole system of cabinet government depends not on legislative enactments but on custom. The British constitution, therefore, may be defined, in the words of Lord Bryce, as "a mass of precedents, carried in men's memories or recorded in writing, of dicta of lawyers or statesmen, of customs, usages, understandings and beliefs bearing upon methods of government, together with a certain number of statutes, some of them containing matters of petty detail, others related to private just as much as to public law, nearly all of them presupposing and mixed up with precedents and customs, and all of them covered with a parasitic growth of legal decisions and

political habits, apart from which the statutes would be almost unworkable, or at any rate, quite different in their working from what they really are."

Meaning of "Unconstitutional" in the British Constitution. —It is, therefore, quite untrue to say that there is no British constitution. It is true that in Britain there is not the same difference between an ordinary statute and constitutional law as there is in America or France. The word "unconstitutional" is often used in political debates, particularly in reference to new laws proposed by the government. If these laws imply new methods of government, or any striking departure from the old methods, the word is used by opponents of the proposed law to discredit the government. What is really meant by "unconstitutional" is that the proposal, if carried into effect, will be an unusual breach of a principle which has come to be regarded as inviolable.

Constitutional and Statute Law.—Constitutional law and statute law differ from each other (*a*) in content. Statute law is simply the law passed by the legislature in a state for the regulation of the lives of the citizens. Constitutional law deals with fundamental principles and methods of government. (*b*) In the method of enactment and amendment. This distinction, however, is applicable only in those states which have a rigid constitution. In Great Britain constitutional law can be distinguished from statute law only by its content or purpose, both constitutional and statute law being subject to the same legislative procedure. The King-in-Parliament, that is the King with the House of Lords and the House of Commons, is the legal sovereign in the British constitution and as such can pass a law raising the income-tax by one penny in the pound, or a law making the profoundest constitutional change.

The difference between statute and constitutional law in rigid constitutions is very marked. In the United States of America the legislature for ordinary legislation is Congress. For constitutional legislation, however, a totally separate machinery exists, a machinery which makes an amendment of the constitution very difficult. The constitution of the United States cannot be amended without the consent of two-thirds of Congress and three-fourths of the states in the federal union. Very elaborate procedure exists for the proposal of amendments and the adoption of amendments.

So elaborate, indeed, is the procedure that it is extremely difficult in the United States to carry through any amendment at all. The same is true of the state constitutions in the United States. The whole theory of the constitutional law in the United States is that it is something higher, more fundamental, and more important than the ordinary law of the land, and as such must not be interfered with too easily. In France also constitutional amendment is subject to a special process. The ordinary legislature in France is the Chamber of Deputies and the Senate, which meet in Paris. But any proposed constitutional amendment must pass through the National Assembly, that is, the two Houses sitting together at Versailles, as well as through the two Houses separately. In Germany, under the old system, the constitution could be amended very much in the same way as ordinary legislation was passed. It required, however, a special number of votes.

2. THE QUALITIES OF FLEXIBLE AND RIGID CONSTITUTIONS

Comparative Merits and Demerits of Flexible and Rigid Constitutions.—Each type of constitution has both its merits and its demerits. The fact that each tends to assimilate some of the characteristics of the other seems to prove that the best type of constitution is a mixture of the flexible and rigid. The chief merit of the flexible constitution is its adaptability. It is alterable without any difficulty and, therefore, it easily meets new emergencies. The flexible constitution is thus very well suited to an advancing community. It can be amended as easily as an ordinary law can be passed. When amendment is necessary, there is no unusual disturbance in the law-making process of the country. The flexible constitution is also valuable inasmuch as it is not subject to popular passion. It is not recognised as particularly sacred by the people. A rigid constitution, on the other hand, is often looked on as a sacred repository of popular rights, and as such in times of popular excitement it is subject to popular violence. In France, for example, during the Revolution the people concentrated on constitutions as the guarantees of rights. The extraordinary number of French constitutions passed during the past century and a half proves that rigid constitutions may often be a danger to national peace. Since the Revolution France has had many constitutions,

each of which was actually in operation for some time; but, except for the present one, none continued in existence for as long as twenty years. (Flexible constitutions provide an easy method of legal amendment and legal development. Whereas in national crises rigid constitutions may be completely shattered, flexible constitutions are so adaptable that they easily can survive political storms) Further, (a flexible constitution provides an excellent mirror of the national mind.) A rigid constitution may represent the national mind at a particular period; but, especially if amendment is difficult, rigid constitutions do not move with the times. This is obvious in the constitution of the United States, where the rigidity of the constitution has necessitated several developments outside the constitution in order to suit the national life of the United States. The most notable extra-constitutional development in the United States is the party system, which arose in order to bring about co-ordination between the legislative and executive branches of government which were so rigidly separated by the constitution.

(The great merit of rigid constitutions is their definiteness. Embodied in a single document, such constitutions are definite and certain. Beyond this definiteness and certainty, however, the rigid constitution frequently is useless. It very often lays down fundamental principles of popular liberty) but these principles, however definitely enunciated, are of little avail unless they are accompanied by constitutional methods by which they can be guaranteed. For example, in the Belgian constitution, there are fundamental ideas governing the liberty of the press and the liberty of speech, but no method is laid down whereby either the press or speech is to be made free. In Great Britain, where there are no such constitutional guarantees, this liberty is secured far more effectively than in Belgium by the rule of law. It is thus very easy to exaggerate the value of rigid constitutions as guarantees of individual liberty. General principles of liberty are apt to be enunciated more as the result of popular passion than as the reasoned basis of civic life, and popular passion loses its meaning in the succeeding generation. It is absolutely impossible, in any one document at one period in history, to give a final statement or analysis of the principles of political life. Rigid constitutions attempt to do this but, unless amendment is extremely easy, they attempt to do what is impossible.

Progress demands adaptability and flexibility, and such adaptability and flexibility can only be secured in countries with rigid constitutions by a sufficiently easy method of amendment. In some cases, however, the method of amendment makes little difference—e.g. in dictatorships, such as Soviet Russia, and the so-called totalitarian states, Germany and Italy. In these cases the method of amendment is as easy as in a flexible constitution.

Some writers hold that rigid constitutions are more valuable than flexible constitutions because they are less subject to party feeling. This, however, is not true. Rigid constitutions are the focus of national sentiment ; they are centres of national discussion and as such are more subject to party forces than flexible constitutions. Further, the flexible constitution, it is sometimes said, is not suited to democracy, because democracies are suspicious of what they cannot understand. Flexible constitutions are long historic growths not easily understood by the average man. Rigid constitutions are clear, and easily understood. Flexible constitutions, therefore, it has been said, are more suited to an aristocratic type of government. This, however, is a theoretical objection. It is questionable whether in normal times the masses trouble about constitutional matters at all. In abnormal times, as we have seen, the rigid constitution is in more danger of destruction than the flexible. It may also be pointed out that the two most free countries in the world, each of them a democracy, Great Britain and the United States, are diametrically opposed in constitutional type, a fact which suggests that both liberty and democracy depend on other bases than rigid or flexible constitutions.

Requisites of a Rigid Constitution.–The modern tendency in constitutions is towards rigidity. It may safely be said that in a few years not a single example of the flexible type will exist. A rigid constitution is the enunciated will of the sovereign people, and, as such, should be definite, and as clear as human language can make it, so that there should be no dispute or likelihood of dispute as to what the constitution means. The constitution usually has three sets of provisions :—

(1) A series of fundamental rights, civil and political.
(2) The outlines of the organisation and the government.
(3) Provision for the amendment of the constitution.

These provisions have been called the three essentials of a constitution : namely, liberty, government and sovereignty. But as these provisions are fundamental, they should be as brief as possible. Brevity lessens the chances of dispute in subsequent generations. Moreover, no one generation should venture to lay down the final laws of political life or organisation. Not only should the constitution be brief, but it should be amendable without too much difficulty. In some of the state constitutions in the United States, not only do the constitutions contain much detail (e.g., sumptuary laws) which properly belongs to the sphere of ordinary statute law, but they are difficult to amend. They err both in their content, which is too detailed, and in their process of amendment, which is too difficult.

3. CREATION AND AMENDMENT OF CONSTITUTIONS

Growth of Constitutions.—Constitutions are the expression of the national will of a people. Rigid constitutions are "dated," that is, they are enunciated at a particular point in history. A constitution like the British grows . it is not made.

Methods of Creating Rigid Constitutions.—Rigid constitutions may be made in two ways :—

(1) They may be made by a legislative assembly.

(2) They may be granted by a superior government.

Examples of the first type are the constitutions of the United States, of France and of Germany. In each of these cases constitutions were formulated and adopted by special legislative bodies as the result of war or of revolution. The first constitutions of the United States were granted by the English government. After the War of Independence the American colonies drew up constitutions for themselves and for the federal government. In France during the revolutionary period several constitutions were drawn up by special legislative bodies, or "constituent" assemblies, but they were all short-lived. The present constitution of France is the result of the Franco-Prussian War of, 1870. It was created by a National Assembly elected by manhood suffrage. In the French constitution a distinction is made between the constitutional laws, which can be amended only by a special process, and organic laws which can be changed by the ordinary legislature. The constitution of the German Empire,

as it was before the Great War, was also the result of wars and revolutions. After the Napoleonic wars the German Confederation was established, but this confederation went through several changes before it culminated in the German Empire. After the Franco-Prussian war the German constitution was drawn up and ratified by a parliament of the whole of Germany. The present German constitution was also the result of war. It was drawn up by a constituent assembly (the National Assembly) elected after the end of the Great War, in 1919.

The British Dominions, with the exception of Eire (the Irish Free State), have constitutions which were granted by the British Parliament. These constitutions, it is true, were only constitutions granted to subordinate law-making bodies, but by the Statute of Westminster, the Dominion legislatures have now practically full constitutional powers.

Circumstances Favouring the Growth of Rigid Constitutions.—We have already noted that even the historic flexible constitution of Great Britain is in danger of becoming rigid. The future seems to be with rigid constitutions. Several circumstances favour the adoption of rigid constitutions. In the first place, the citizens of modern democratic countries desire to guarantee their rights by restraining the powers of government. In the second place, democratic ideas of self-government have taken the form of granting constitutions to subordinate bodies, in order both to guarantee the rights of the people concerned and to prevent controversy regarding the principles of government. In the third place, when a people changes its form of government, it naturally desires to make explicit the basis of the new government. In the fourth place, the rapid advance of federalism as a form of government has given much impetus to rigid constitutions. Federalism is one of the most popular methods of modern organisation and in a federal form of government, it is absolutely necessary definitely to mark off the spheres of the central and of the local governments by a rigid constitution.

Rigid constitutions thus seem likely to survive at the expense of flexible constitutions. For many years no new flexible constitution has been established, whereas flexible constitutions have been replaced by rigid constitutions. No rigid constitution, moreover, is likely to become entirely flexible. The whole tendency of democracy is towards the

establishment of constitutional safeguards through the means of rigid constitutions.

Amendment of Constitutions.—Obviously no assembly in drawing up a constitution can foresee all the circumstances that are likely to arise in the future. In the making of constitutions some provision must be made for alteration or amendment. In a flexible constitution the question of amendment does not really arise because the ordinary legislature makes, and can amend both constitutional and statute law. In rigid constitutions, special methods of amendment are provided. These methods are four in number :—

(1) The function of amendment may be given to the ordinary legislature but at the same time be made subject to a special process, for example, a fixed quorum and a minimum majority. In Belgium for the amendment of the constitution two-thirds of the members of each house must be present and a two-thirds majority is necessary. A minimum majority only may be required, such as three-quarters of the total house. Two-thirds is a very common majority required. Sometimes the legislature is dissolved in order that the opinion of the people may be tested before the proposed amendment is carried out. The idea in this case is to submit the proposed amendment to a new set of men. This arrangement of dissolution is as a rule combined also with the necessity for the special majority. The constitutions of Holland, Belgium, Norway, Portugal, Sweden and Roumania are of this type.

(2) A special body may be created for the amendment of the constitution. The most notable example of this is the United States where a Convention is called to consider constitutional questions. This method in America is combined also with special majority in the legislature. Two-thirds of Congress and three-quarters of the states must consent to the adoption of the constitutional amendment. Amendment to the United States' constitution may be *proposed* either :—

(*a*) By two-thirds of the members of each house of Congress; or

(*b*) By the legislatures of two-thirds of the states.

These may petition Congress to call a Convention to consider the proposed amendment and this Convention may propose the changes. In either case the change proposed must be

submitted to the individual states, to be voted upon either by their legislatures or by conventions called in the states for the purpose, as determined by Congress. Any amendment which is agreed to by three-fourths of the states becomes a part of the constitution.

In the pre-war Serbia and Bulgaria amendments used to be twice passed by the ordinary legislature and then submitted to a special assembly elected in the same way as the legislature. This assembly had the final decision on the amendment. In France for constitutional amendment the two houses of the legislature sit together as a constituent assembly at Versailles. The houses first decide separately that amendment to the constitution is necessary. The amendment is adopted by the Houses sitting together at Versailles.

It will thus be seen that in some states a combination of both the first and second methods is adopted.

(3) Sometimes proposed amendments of the constitution are submitted to local authorities, either for consideration or for approval. This method is particularly suitable for federal states where, naturally enough, the individual states which compose the union must be consulted before the character of the union is altered. This method exists in Switzerland, Australia and the United States. It is not, however, invariably adopted in federal governments. In the Argentine Republic, for example, a majority of the legislature, with a special convention, and in Brazil the legislature alone by a two-thirds majority in three successive debates can alter the constitution.

(4) Proposed amendments may be referred to the people. This is the most democratic method of amendment. The theory behind it is that a constitution is a guarantee of popular rights and as such should not be amended without direct reference to the people. This method exists in Australia, in some of the states of the United States of America and in Switzerland.

One or two separate points arise in connection with the amendment of constitutions.

(1) Sometimes a constitution does not make special provision for amendment. In such a case either the ordinary legislature may amend it, as in pre-Fascist Italy (the Italian constitution although a definitely enacted instrument was, according to Lord Bryce's criterion, a flexible constitution) ;

or the authority which created the constitution may amend it.

(2) Constitutions are amended by other processes than by formal legislation. In rigid constitutions there is a certain amount of flexibility. No rigid constitution can exist without change of some kind. New conditions of life, new ideas of political organisation and new ideals gradually change the setting of constitutional laws. Rigid constitutions thus gradually change by usage as well as by formal amendment. They are also changed by judicial interpretation. The courts have to determine cases connected with constitutional law and in doing so they bend the law to suit new and unforeseen circumstances. This is particularly the case in the United States of America where the process of formal amendment is extremely difficult. Because of this the United States' courts have had to suit the constitutions to modern conditions by the doctrine of "implied powers."

CHAPTER XI

THE FORM OF GOVERNMENT

1. CLASSIFICATIONS OF PLATO AND ARISTOTLE

Distinction between State and Government.—The first point to be noted in the classification of the forms of government is the distinction between the state and government. In many books the classification of the forms of government is entitled the "forms of the state." Strictly speaking, all states are the same. The student must bear this in mind: the "form of state" is really the form of government. It is true that we might classify states according to the type of mind evident in the state, or according to population or territory. Such classifications, however, would be of little value. It would not be helpful, for example, to divide states according to the size of their population, making the classification of large, medium and small.

Many classifications of the forms of government have been given by writers on Political Science. The most common

bases are (1) the number of people in whom the supreme power rests, and (2) the form of the state organisation or government. As we shall see, it is extremely difficult to find a satisfactory basis for the classification of modern governments. While certain general characteristics are common to some governments, we often find along with these common elements marked dissimilarity. Moreover, the forms of government change very quickly, so that while a classification may be satisfactory at the present moment it may be quite unsuitable a generation hence.

The Classifications of Plato and Aristotle.—The most famous of all classifications of forms of constitution or government is that given by Aristotle in his *Politics*. Aristotle's classification is not, however, an original classification. He himself was a pupil of Plato, and Plato's classification, though not so well known, is almost of equal value and importance.

Plato's Classification.—Plato's classification has not the definiteness of that of Aristotle. His views, moreover, are not consistent. He gives a different series of forms in the *Republic* and the *Statesman*. In the *Republic* he gives the forms which are noted below in connection with the cycles of political change. From the *Statesman* may be extracted a logical classification, which bears a striking similarity to the later classification of Aristotle. As Aristotle borrowed from Plato, so did Plato borrow from Socrates. According to Socrates the three main forms of government are monarchy, aristocracy and democracy. Monarchy and tyranny each is the government of a single person, but in monarchy, as contrasted with tyranny, there is respect for law. Aristocracy is contrasted with plutocracy, or government by the few rich. In aristocracy the capacity to rule is recognised : in plutocracy mere wealth is the test of rule. Democracy is the rule of ignorance. Socrates held that "only those who know shall rule."

Plato adopts the Socratic criterion of knowledge as the supreme test of goodness in government. Working with this principle he gives three grades of state :—

1. The state of perfect knowledge, where the real sovereign is knowledge. No such state exists, but this is the best state of all. It does not count in ordinary classifications, but it is the ideal state, and other states are to be judged by it. Plato seems to regard this ideal state sometimes as a monarchy,

or the rule of an all-wise one, sometimes as an aristocracy, or the rule of the best (the original meaning of aristocracy). It may best be termed Ideocracy, the state of the sovereign idea or reason.

2. States where there is imperfect knowledge. In such states laws are necessary, because of man's imperfection, and these laws are obeyed.

3. States where there is a lack of knowledge : states of ignorance, where laws exist and are not obeyed.

Deducting the first class, which does not exist, we have two classes left—states where law is obeyed, and states where it is not obeyed. With this basis, we also have the Socratic basis of the rule of one, of few and of many. Thus we have :—

Form of constitution.	States in which law is obeyed.	States in which law is not obeyed.
Rule of One.	Monarchy.	Tyranny.
Rule of Few.	Aristocracy.	Oligarchy.
Rule of Many.	Moderate Democracy.	Extreme Democracy.

Plato classifies these also in order of merit. Monarchy is best : tyranny is worst. Aristocracy and oligarchy are intermediate. Democracy in states in which law is observed is the worst type ; but in non-law states it is the better. It is the weakest for virtue and also the weakest for vice.

Aristotle's Classification.—Aristotle's classification likewise has a double basis. The first basis is that of Normal and Perverted. The criterion in this case is the end of the state. As a moral entity, the state pursues, or should pursue, the good life. Therefore every state which pursues the end of the good life is a normal or true state. States which do not pursue this end are perverted. Thus normal, or true, and perverted is the first basis. The second is the basis of number, as in Plato's classification, or the constitution, which determines the government. Thus we have :—

Form of constitution.	Normal forms, in which the rulers unselfishly seek the common welfare.	Perverted forms, in which the rulers seek their own welfare.
Rule of One.	Monarchy.	Tyranny.
Rule of Few.	Aristocracy.	Oligarchy.
Rule of Many.	Polity.	Democracy.

"Polity" is a Greek word used by Aristotle to designate this particular type of government. Its nearest modern equivalent is constitutional democracy. It is the unselfish rule of the many for the common welfare.

Aristotle's classification is thus founded on (*a*) the end of the state, and (*b*) the constitution, or number of persons who actually hold power. It is important to remember the first of these bases, because many critics have rejected Aristotle's classification on the ground that it is based purely on number or quantity, as distinct from quality. Obviously, however, Aristotle accepted number only as a secondary standard. His chief standard for the definition of all things was the end, hence his distinction of normal and perverted, which is a distinction of quality.

Aristotle's classification may be called the fundamental classification of the forms of government. The classification is not sufficient for modern forms of government, but it has provided the historical basis of practically all classifications made hitherto. Even in modern classifications the general ideas of Aristotle are frequently adopted.

Cycles of Political Change: Plato's Cycle.—In addition to their classifications of government, both Plato and Aristotle give what in their opinions are the cycles of political change. Plato's cycle starts from the highest form, ideocracy, the form which is the result of the highest type of mind. Plato classified states according to the qualities of mind shown in them, and his cycle of political change follows the same procedure. The highest type of state is that which has the highest type of mind as its basis, that is, the state where reason is supreme. The constitution resulting from this is monarchy or aristocracy, or preferably, in the Platonic language,

ideocracy, the rule of the idea or reason. Ideocracy degenerates in time into the type of state where spirit replaces reason. This type of government is known as timocracy. Timocracy means government by the principle of honour or spiritedness. It is a military type of state. In the timocratic state there are still elements of reason, but it also contains the element of desire, because of private property. Private property leads to money-making and in time timocracy gives way to oligarchy. In oligarchy the wealthy classes rule. Gradually the people revolt against wealth and the oppression which wealth brings. This leads to democracy. In democracy the ordinary man-in-the-street is the characteristic type. It is the negation of order and freedom. There is no justice in democracy, and no unity. Gradually democracy passes into the hands of demagogues, and ultimately the most powerful demagogue seizes the reins of government and becomes sole ruler. This form of government, tyranny, is the worst type possible.

Aristotle's Cycle.—According to Aristotle, the cycle of political change starts from monarchy. The first governments, he considers, were monarchical. In early communities men of outstanding virtue were created kings. Gradually other persons of virtue and merit arose and tried to have a share in political power. This led to aristocracy. By the deterioration of the ruling class, aristocracy passed into oligarchy ; from oligarchy the form of government changed into tyranny, and from tyranny the change was to democracy. Aristotle's theory of political change is based on the end of the government, just as was his classification of states. Plato's theory of political change is founded on the type of mind prevailing in the state.

2. OTHER CLASSIFICATIONS

Other Classifications.—Many other attempts at the classification of the forms of government have been made by political theorists of all ages. Machiavelli, the Italian writer, who ends the mediæval era and heralds the modern, adopts the Aristotelian classification, and adds the mixed form of government which, he says, is the best. The mixed form is given by both Cicero and Polybius. Machiavelli is mainly concerned with monarchies and democracies : different circumstances, according to him, require different forms of governmental organisation. Jean Bodin, the first comprehensive political philo-

sopher of modern times, bases his classification solely on the number of men in whose hands sovereignty rests. When the sovereign power is in the hands of an individual, the state is monarchic; when the sovereignty is in the hands of less than a majority of the citizens, the state is aristocratic; and when sovereignty rests in the majority, it is democratic. Monarchy, again, is classified by Bodin into three species—(*a*) despotism, in which the monarch, like the ancient patriarch, rules his subjects as the *pater familias* rules his slaves; (*b*) royal monarchy, in which the subjects are secure in their rights of person and property, while the monarch, respecting the laws of God and of nature, receives willing obedience to the law he himself establishes; and (*c*) tyranny, in which the prince, spurning the laws of nature and of nations, abuses his subjects according to his caprice. Of these three species, Bodin regards royal monarchy—if the matter of succession is firmly fixed on the principle of heredity, primogeniture and the exclusion of the female line—as the best form of state or government. Thomas Hobbes is a close follower of Bodin and adopts Bodin's classificatioh unreservedly. John Locke gives a new classification; according to him "the form of government depends upon the placing the supreme power, which is the legislative." When the "natural" men first unite by compact into political society, the whole power of the community resides naturally in the majority. If this majority exercises that power in making laws for the community from time to time, and in executing those laws by officers of their own appointing, then the form of government is a perfect democracy; if the power of making laws is put into the hands of a few select men, and their heirs or successors, it is an oligarchy; if it is put into the hand of one man, it is a monarchy. Locke is careful to point out that there can be forms of government, but not forms of state. Montesquieu, the French writer, classifies governments into (1) republics, with their two varieties of democracy and aristocracy, (2) monarchies (of the west), and (3) despotisms (of the east). Each form has its peculiar principle—of democracy, public service; of aristocracy, moderation; of monarchy, honour; of despotism, fear. The duration of any of these forms depends upon the persistence in a given society of that particular spirit which is characteristic of the form. According to Rousseau, the famous contemporary of Montesquieu, a government is

called a democracy, an aristocracy, or a monarchy, according as it is conducted by a majority or a minority of the people or by a single magistrate. There are, again, three forms of aristocracy—natural, elective and hereditary—of which elective aristocracy is the best, and hereditary the worst. Rousseau also allows for the existence of the "mixed" form of government, in which the various elements are combined.

Bluntschli accepts Aristotle's classification as fundamental, but he considers that a fourth form is necessary. This fourth form is theocracy. Its perversion Bluntschli calls idolocracy. There is no real necessity for this additional form of government. It is useful, indeed, to have the term "theocracy" to describe that form of government in which the ruler is supposed to interpret the will of God or in which God himself is actually supposed to rule, but theocracies can be classified under either monarchy, aristocracy or democracy. The modern political scientist is not concerned with the intervention of God in politics. His duty is to decide where in the last resort the supreme power in the government lies, and that supreme power, so far as he knows, must always lie in either one person or a number of persons.

The German writer, von Mohl, tries to classify states on an historical basis. His classification is (1) patriarchal states; (2) theocracies; (3) patrimonial states (in which sovereignty and the ownership of the land both belonged to the ruler); (4) classic states, such as those of Greece and Rome; (5) legal states; (6) despotic states. Von Mohl gives other types in addition to these and sub-divides classic states into monarchy, aristocracy and democracy. His classification is based on no single principle and it makes no attempt to distinguish the state from government.

The "Mixed State."—Many other classifications have been given, particularly by German writers of last century. But not one of them gives a satisfactory basis on which to classify modern governments. Before proceeding to the classification of modern forms of government, we may first dismiss the form of state sometimes called "mixed state." In addition to monarchy, aristocracy and democracy, Aristotle himself speaks of this mixed type. The Stoics considered the mixed type as a good type of state, and Cicero and Polybius, both speak of the Roman state as a mixed form, composed of monarchic, aristocratic and democratic elements. There is really no such

form of state. The mixture of monarchy, aristocracy and democracy does not make a mixed state. The state is sovereign and cannot be mixed. The form of government, however, may contain elements of monarchy, aristocracy and democracy, but to say that there is a mixed state is to confuse the state with government.

Sir J. A. R. Marriott's Basis of Classification.—For the classification of modern forms of government, it is hardly possible to adopt any single basis. Sir J. A. R. Marriott, the modern English writer, adopts a tripartite basis. While accepting Aristotle's classifications as fundamental, he regards monarchy, aristocracy and democracy as somewhat inadequate for modern governments. Thus, to take five examples, England is a monarchy, Germany (before the War) was a monarchy, France is a democracy, Russia (before the War) was a monarchy and the United States is a democracy. Yet Germany, nominally a monarchy, was really more akin to the United States, which is a democracy, than it was to England which is a monarchy. England, a monarchy, is really more akin to France, nominally a democracy, than England was to the monarchical Russia. This comparison suggests a principle. If we take the pre-war Russia, France, Spain, Italy and Great Britain, they agree in this respect, that they are simple or unitary governments. Germany, the United States, Switzerland, the old Austria-Hungary, Canada, Australia and South Africa are complex, federal or composite. This is one basis of division. In a unitary type of Government the local organs, such as provincial and county bodies, are created by the central government; the central government preserves power to abolish or alter these bodies as it wishes. In a federal government, both the central or federal authority, and the provincial or state authorities derive their powers from a constitution. In a federal government, each authority holds its power in such a way that the powers cannot be altered without the alteration of the constitution. So long as the constitution remains as it is, neither can affect the powers of the other.

The next basis is that of rigid and flexible constitutions. In a rigid constitution there is a marked distinction between the ordinary law-making powers and the constitution-making powers. In a flexible constitution, the ordinary legislature has constitution-making powers. In this way we may

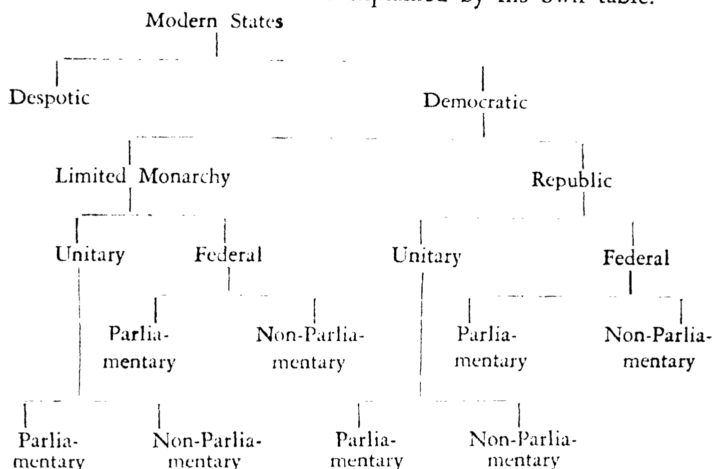
classify the United Kingdom and the old Austria-Hungary and all despotisms (where the will of a single individual is the law-making power) as flexible, and the United States, France, Germany—in fact all other governments—as rigid.

The third basis of classification is monarchical or presidential government on the one hand, and parliamentary, responsible or cabinet government on the other. This is undoubtedly the most important basis of classification for modern governments. The criterion in this case is the relation of the executive to the legislature. Executive power in government may either be co-ordinate with, superior to, or subordinate to the legislature. Where the executive is superior to the legislature, the type of government may be called despotic. The executives in practically all modern democratic states are either co-ordinate with or subordinate to the legislature. In the United States, the executive is theoretically co-ordinate with the legislature. In France, Italy, Great Britain, the British Dominions and many other countries, the executive is subordinate to the legislature, the type of government is called *responsible* government, because the executive is responsible to the legislature. This type is also called cabinet government. The name cabinet government owes its origin to the English system where the Cabinet, which is the executive, is responsible to the House of Commons.

Thus we have, according to Marriott, three bases of division : (1) simple or unitary and composite or federal, or, simply, unitary and federal ; (2) rigid and flexible ; (3) monarchical, presidential, non-responsible or non-parliamentary and parliamentary, responsible or cabinet government. Applying these criteria, we find that Great Britain is unitary, flexible and parliamentary. The United States is federal, rigid and presidential. France is unitary, rigid and parliamentary. Germany, before the War, was federal, rigid and presidential, or rather monarchical. Canada and Australia are federal, parliamentary and mainly rigid, an element of flexibility having been introduced by the Statute of Westminster. India is federal, rigid with an element of flexibility, and partly parliamentary and partly non-parliamentary.

Dr. Leacock's Classification.—Professor Leacock gives almost a similar classification. Professor Leacock adopts as the fundamental distinction, despotic and democratic. Demo-

cratic states he subdivides into limited monarchy, in which the nominal headship of a personal sovereign is preserved, and republican government, in which the head of the executive is appointed by the people. Each of these kinds, he subdivides into unitary and federal, and in turn each of these he subdivides into parliamentary and non-parliamentary. Professor Leacock's classification is best explained by his own table.



3. MONARCHY, ARISTOCRACY AND DEMOCRACY

The classification of Aristotle we have seen to be applicable only in a very general way to modern forms of government. The manifold new developments of modern democracy, and of government organisation in general, have materially altered the traditional classification. We have now to adopt new bases of classification, but, mainly for historical purposes, we must analyse shortly the Aristotelian forms of government by themselves.

1. **Monarchy.**—Monarchy is the oldest type of government known. It is the type invariably found in early societies. In connection with the origin of the state, we have already seen how from both the religious and civic senses of early man evolved a monarchical form of government. Whatever may be said against the various historical types of monarchy, there is no doubt that in the ruder stages of social development, the monarchical system was the most beneficial. Monarchy is marked by singleness of purpose, unity, vigour

and strength. It secures order and strong government. The monarch in early societies combined in himself the functions of law-maker, judge and executive, and was thus able to hold together by his own personal force a society which otherwise might have broken up into many elements.

Hereditary and Elective Monarchy.—Monarchy may be classified in various ways. The most usual classification is absolute monarchy and limited or constitutional monarchy. Another classification is elective monarchy and hereditary monarchy. Hereditary monarchy is the normal type, but there are several historical examples of elective monarchy. In early Rome the kings were elected, as also were the emperors in the Holy Roman Empire. The Polish kings used also to be elected. In early societies, too, there was a considerable element of election. Sometimes the crown fell to the lot of the ablest general of the royal family, who was elected by the chief men of the tribe or people. All modern monarchies are hereditary, although sometimes, as in the United Kingdom, the legislature regulates the succession to the throne.

Absolute Monarchy.—Absolute Monarchy means that ultimately the monarch is the final authority in making, executing and interpreting law. His will is the will of the state. There are many historical examples of absolute monarchies. The most notable is the French monarchy under Louis XIV, who declared "The state is myself." Absolute monarchy is still common in parts of Asia and Africa, but with the spread of enlightenment it is rapidly dying out.

Hobbes's Views.—Hobbes is of opinion that of all forms of government absolute monarchy best answers the purpose for which sovereignty is instituted, and that, for the following reasons:—

(1) A monarch's private interest is more intimately bound up with the interests of his subjects than can be the case with the private interest of the members of a sovereign assembly.

(2) A monarch is freer to receive advice from all quarters, and to keep that advice secret than an assembly.

(3) Whereas the resolutions of a monarch are subject only to the inconstancy of human nature, those of an assembly are exposed to a further inconstancy arising from disagreement between its members.

(4) A monarch "cannot disagree with himself out of envy or interest, but an assembly may, and that to such a height as may produce a civil war."

Theocracy.—Absolute monarchy is sometimes combined with theocracy. In theocracy, the ruler is supposed to be either the interpreter of the will of God or the direct instrument of God. Such a theory of government can have only one organisation, and that is absolute monarchy. If the ruler is directly equivalent to God, then there is no appeal against his will. History gives many examples of theocratic government. The Jews considered themselves directly governed by God whose instrument was the king. The only states that can be called theocratic at the present day are the Muhammadan states, the fundamental law of which is the Koran. But in the modern Muhammadan states absolute monarchy is gradually being tempered by constitutional elements.

Limited Monarchy.—By limited monarchy is meant a monarchy that is limited by a constitution. Sometimes constitutional rights have been wrested by the people from unwilling monarchs : sometimes monarchs have granted constitutions on their own initiative. Limited monarchy is thus a constitutional type of government, and as such is the same in principle as the republican type of government. The only difference between the limited monarchy and a republic is that in a republic the chief executive is elected, whereas in a monarchy the chief executive is hereditary. One of the chief merits of limited monarchy is that it secures continuity in the executive head of government. The main defect is that the hereditary principle is not a sound basis for the selection of the head of an executive. As a matter of fact, in modern limited monarchies, the monarch as a rule has only nominal powers. In the United Kingdom, for example, the chief executive, though nominally the king, is really the Cabinet. For every public act of the King the ministers are actually responsible.

Limited Monarchy in the United Kingdom.—The limited monarchy of the United Kingdom occupies a special place. For one thing, the monarchy has been continuous, with only a slight break, ever since England became a nation. The institution is ingrained in the popular mind, and when other monarchies have been attacked or destroyed, no voice has been raised against the English kingship. The constitutional

position of the King makes him powerless in government affairs, nevertheless by his personality he is able to exert considerable influence on his ministers. But the chief virtue of the English monarchy is the sense of security which it fosters among the people. Monarchy, too, has the virtue of impressiveness. The pomp and dignity surrounding a throne not only attract the people but give additional impressiveness to both the institution of monarchy and the personality of the monarch. The usefulness of the King's personality was amply demonstrated in the Great War, when by practice and precept he encouraged, guided and warned the people.

The English monarchy is also invaluable as an imperial asset. The King is the chief bond of union in the vast Empire: as Professor Lowell has pointed out, "the Crown is the only visible symbol of the union of the Empire, and this has undoubtedly had a considerable effect upon the reverence felt for the throne." General Smuts, the South African statesman, expressed identical sentiments when, speaking of the Empire, he said: "We are an organic union forming one whole with the King as the connecting link."

2. **Aristocracy.**—Aristocracy may be of various kinds: it may be aristocracy of wealth, of heredity, of intellect, or it may be military aristocracy. The real meaning of aristocracy is the government of the best (the word "aristos" is a Greek word, meaning best). According to Aristotle's classification, aristocracy is a normal type of government, the perversion of which is oligarchy, or the rule of a few for their own interests. Unfortunately, aristocracy is very frequently confused with oligarchy, hence the sinister meaning usually associated with the word aristocracy. Aristocracy is popularly regarded as equivalent to the rule of the higher classes in their own interest. Throughout the history of political thought the aristocratic type of government has been held up as the ideally best type. To avoid the word aristocracy, some writers use the term "aristo-democracy" which means that form of democratic government in which the best types of men wield the power.

Merits of Aristocracy.—Although aristocratic government, in the sense of the rule of the higher classes, is a thing of the past, it is not to be thought that aristocracy is essentially evil. Its chief quality is that it is conservative. It does not

like change, and strongly resents rapid change. It reveres custom and tradition and tries to prevent the quick inrush of new ideas into government or society as a whole. In every government, for the sake of stability, there should be a certain amount of conservatism. The best principle of both social and political progress is the principle of conservative innovation. This means that every reform should be integrally connected with past institutions. A reform which is either too new or too unexpected disturbs popular feeling and as such is a danger to the stability of government. It is, therefore, of the greatest importance in social and political progress that the principle of progress or liberalism should always be joined to the principle of stability or conservatism.

We shall see in connection with the organisation of the legislature that most modern governments attempt to preserve a certain amount of aristocracy in government by the system of second chambers. For second chambers the basis of selection is sometimes aristocracy of birth, sometimes aristocracy of wealth, sometimes aristocracy of intellect. Where the second chambers are elected, the elections are usually so arranged as to make the second chamber representative of the best minds in the nation. Such a system, therefore, is aristocratic in the best sense.

Weakness of Aristocracy.—The chief weakness of aristocracy is that division of the people into classes pleases nobody. It is impossible for any man or body of men to divide a people into social classes by any satisfactory criterion. A very common basis of classification is property or wealth. In any society the propertied or wealthy class is relatively small, and rule by this class is resented by the large or non-propertied classes as oligarchical (oligarchy literally means the rule of the few). It is equally impossible to divide any community into classes by intellectual or moral qualifications.

3. Democracy.—Democracy is pre-eminently the modern type of government. Democracy literally means the rule of the people (the Greek word "demos" means the people), or popular government. It is the government of the people, by the people and for the people. It is of two kinds: (1) pure or direct democracy, and (2) representative or indirect democracy.

Direct Democracy.—In the first type, pure or direct democracy, the will of the state is expressed directly through

the people themselves. Such a type of democracy is possible only where the area of the state is very small—where the people of the state can all meet and deliberate together to make laws. This type of democracy existed in all the Greek city-states. It must be remembered that in these city-states, only the citizens were allowed to take part in the proceedings of the Legislative Assembly. Not all the inhabitants were citizens. The citizens were often in a minority of one or two; the majority was made up of slaves. The direct democracy of the ancient Greeks was possible only because the manual work in the state was done by slaves. In modern democracy the very class which was excluded in Greece—the workers—is the most important. Greek democracy was a democracy in relation to the citizens in the state, but it was a very close aristocracy in relation to the total population in the state.

Indirect or Representative Democracy.—Modern democracy is indirect or representative. In modern large nation states it is physically impossible for all the citizens to meet together and deliberate. Even if it were possible, the work of legislation would be so great that the ordinary industrial and commercial life of the country could not be carried on. Modern democracy, therefore, rests on the principle of representation. Instead of everybody attending the legislature the people elect representatives by vote. These representatives attend the legislature and act on behalf of the citizens. If the citizens are not satisfied with their representatives, they may reject them in the next elections. This system of representative democracy combines the principle of aristocracy—in the sense of the rule of those best qualified to rule—with that of democracy.

Virtues and Dangers of Modern Democracy.–Representation is only an approximate way of expressing the will of the people. As yet no perfect system of representation has been devised. The chief defects of democracy are due to the fact that it has been found impossible to make a perfect organisation for democracy. In theory democracy is the best form of government. It is the government of the people as distinct from the government of an individual or of a class of people. It makes all the citizens interested in their country by giving them a voice in legislation. It educates and enno-

bles the individual citizen : it gives each a sense of responsibility which gives a new meaning to his personality.

Another virtue of democracy is that it is less liable to revolution than other forms of government. Popular government is government by common consent. From its very nature, therefore, it is not likely to be revolutionary. On the other hand there is always the danger in democracy that it may develop into what Aristotle regarded as the perversion of democracy, namely, mob rule or ochlocracy. The Greek writers continually bring before us the danger of demagogues and this danger is as marked in modern democracy as it was in ancient democracy. The word demagogue literally means a leader of the people : actually it means one who tries to stir up popular passion against either the government or the higher social classes.

The Rule of Ignorance.—The greatest of all the dangers of democracy, is, as Plato pointed out, that it may be the rule of ignorance. Democracy, it is often said, pays attention to *quantity* and not to *quality*. Particular emphasis is laid on this criticism in modern dictatorships. Democracy, the dictators say, means the rule of the "average man" whereas government should be exercised by the best man. It is true that the business of government is highly technical. It requires expert administrators, and expert legislators. Not everyone can be a profound thinker on government matters ; but every citizen should acquaint himself with current problems so as to pass an intelligent opinion on them. The danger of democracy is that the citizens may not be sufficiently educated to appreciate the meaning of the issues which come before them at elections. They may be misled either by demagogues or by class passions. Great responsibility is thrown on them at every election, for upon the type of representatives they choose will depend the future course of legislation. The popular vote must be given to the best men. Both in Britain and in America it would be possible to show that the best thinkers of their time, if they wished to be elected to the legislature, could have been elected. In modern democracies, on the whole, the popular vote has proved a good selective agency. The modern "demos" has not proved so lacking in judgment as many of the opponents of democracy would have us believe.

The only certain antidote to demagogy is the sound

education of the masses : in fact the backbone of all democracies is sound education. Where each individual has a voice in government, he should be instructed in public matters to make his voice intelligent. In modern democracy the necessity of a sound educational system as a rule has been recognised. Democracy is the result of popular education, and sound popular education is the chief need of democracy.

Ineffectiveness of Democracy.—Another criticism of democracy is that it is lacking in effectiveness. For effective action, it is said, unity of action is essential. One bad general, as Napoleon said, is better than two good ones. This plea of effectiveness in executive work is one of the main theoretical justifications for dictatorship. According to the Fascists, a democratic state is a collection of "atoms." In a multitude of minds, nothing but discussion is possible ; for a vigorous national life, there must be unity of control. How unity of control has been established in modern dictatorships will now be briefly examined, following which a few paragraphs will be given to discussing the relative effectiveness of democratic and "presidential" executives.

4. MODERN DICTATORSHIPS

Results of the Great War.—Prior to the Great European War there can be little question that the trend of political society in all parts of the world was towards democracy. The Great War was regarded as a fight of democracy against autocracy ; it was fought, as was usually said, to make the world safe for democracy. The Treaty of Versailles, which represents the settlement of the war, was framed on broad democratic lines. The principle of nationality was put into effect with respect to the old subject nationalities of Central Europe ; Alsace Lorraine was returned to France, and imperialism was discouraged by the mandates system, under which there could be no "annexation" of territories hitherto belonging to Germany. It was assumed that all the new states, as well as the old states, now realigned, would gradually develop along the lines of parliamentary democracy. In the post-war settlement, however, one of the original allied powers was absent—Russia. Russia in the meantime had had a revolution, and had concluded a separate peace. The Russian revolution, which must be regarded as one of the turning points

of modern history, led ultimately to the creation of the U.S.S.R. or the Union of Soviet Socialist Republics.

The Russian Revolution.—Previous to the Great War, Russia was a monarchy. The Tsar of all the Russias was the head of the government, and his will was law. His advisers and chief executive officers belonged mainly to the Russian aristocracy, which was suspicious of liberal ideas. For some years there had been internal conflict between the conservatism of the older school and the liberalism of the younger men and the educated classes ; this conflict had resulted in a measure of democracy, at least in form, but in the liberal formative period, many Russians had suffered imprisonment or had gone into exile because of their opposition to the established system. When the Great War broke out the Russians seemed to be a remarkably unified people. This nationalism, however, was severely shattered by the failure of the Russian military machine. After preliminary victories, the Russian armies suffered severe defeats : intrigue and corruption in high places led to failure in organising not only the military strength of the country but the food supplies of the civil population. Propaganda by the enemy and by the Russian exiles helped in the disintegration of the army and the government : ultimately the Tsar was forced to abdicate. Once the Tsar, who was the semi-divine symbol of Russian unity, abdicated, chaos quickly followed. The Russian troops refused to fight ; famine conditions resulted from the break-down of the government, and a separate peace was made with the Central Powers. Several leaders and parties attempted to assume control, but gradually one figure, and one policy, dominated—Lenin and Bolshevism, or Russian communism. Lenin and his lieutenants, the chief of whom was Trotsky, had a clear policy and a definite object, which, in spite of party dissensions and civil war, they ultimately achieved. Lenin was a Russian exile, who for many years had been an ardent follower of Karl Marx, whose socialistic doctrines he adapted and expanded for revolutionary purposes.

Marxian Socialism.—The central point in the doctrine of Karl Marx (1818-83), the theory of surplus value, according to which the value of an article is said to be dependent upon the amount of labour spent upon its production, was current in economic thought before Marx's time ; but Marx, while admitting that an article might have a value in use not

connected with the amount of labour spent upon it, e.g., in the case of air or water, held that in the case of exchange value the only property articles had in common is the labour required to produce them. The quantity of labour could be measured by its length in hours, days or weeks. The value of one commodity therefore is to the value of any other, as the labour and time necessary for the production of the one are to the labour and time necessary to produce the other. He went on to argue that what the capitalist receives as rent, profit or interest, comes from surplus value produced by labour. Wage earners, who apply labour to make articles for exchange, he said, receive no return for their work. The value accruing from their labour is taken by the owners of property. The capitalist owns the plant, tools and raw material upon which labour can be exerted; the workers own one thing only—the power to work. This power they have to sell to the capitalist, who pays them only sufficient to keep them alive. The capitalist thus exploits workers in order to increase surplus value. The more he increases this surplus value the more miserable are the conditions under which the workers live. The capitalist system, accordingly, must be abolished. Rent, profit and interest must go, and this he said, could be achieved under a collectivist system. The antagonism between the producing classes (the workers) and the owners (the capitalists) would thus disappear.

So far Marx's doctrine is not very different from that of other socialists; in fact, the theoretical part of Marx's socialism, as distinct from his programme of action, is of an evolutionary type. He believed that a socialistic system of society would inevitably be the outcome of the clash between the workers and the owners. Capitalism would gradually decay. As the tendency of capitalism was towards large scale production and monopoly the numbers of the workers would gradually increase whereas the number of capitalists would gradually diminish. Smaller capitalists would be gradually crowded out and their interests would merge with those of the working or proletarian classes. Further, large scale production, he said, creates favourable conditions for socialistic or revolutionary upheaval by bringing vast numbers of workpeople together in concentrated areas. The growth of large factories also tends to encourage class consciousness among the workers and it provides an easy means of co-operation.

Also, as the capitalist system becomes more concentrated and more intensive, it is necessary for the capitalists to find new markets. This leads to the development of means of communication, and this in its turn facilitates intercourse between the different workers of the world. The capitalist system also helps in encompassing its own ruin by producing periodical crises, or slumps. Over-production leads to lower prices, for the workers can absorb only what their subsistence wage permits. Also, to increase profits or surplus value, the capitalist is always ready to take advantage of new inventions, which reduce the number of consumers by putting workers out of employment.

Marx's Programme of Action.—To his general theory of socialism, and the inevitability of the end of capitalism, Marx added a programme of action, the purpose of which was to teach the workers to translate their power into action by means of combination. The wage earners in each country, he said, should join together and form a political party. In this way, utilising the ordinary procedure of democratic forms of government they could secure a majority in the legislature. If such a majority could not be secured by means of constitutional action, for example, in countries where the capitalist classes were defended in their privileges either by military force or by a constitution, then the only method open was force. Once the workers had acquired control, it was their duty to make their position secure. This Marx thought they could do by democratic methods such as universal suffrage, popular election of officials, free public education and a citizen, as distinct from a standing, professional army. Once the workers secured political supremacy, it would be their duty to introduce collectivism. He thought that the collective process should be gradual ; the immediate task of the working class on assuming power should be nationalisation of the land, the state-ownership of transport and communications, state control of credit and banking, the abolition of the rights of inheritance, and such like, as well as the enactment of positive social measures connected with education and labour conditions.

The Class War.—Marx latterly tended to emphasise revolution or the class war more than evolution, and in his later days he turned to the dictatorship of the proletariat as the means by which the bourgeois or property owning class should

be abolished. It was this idea of the dictatorship of the proletariat which, elaborated by later writers, particularly Lenin, became the theoretical basis of the Russian revolution. The Russian theory, to which the general name "Bolshevism" came to be applied (the word "bolshevik" in Russian means majority, and the name was given to a particular party), laid emphasis on the revolutionary aspect of Marx's work. While Marx favoured waiting till conditions were favourable, the Russians thought that the proletariat should seize power at any time they could, without respect for constitutional methods. Force, they taught, was the thing that mattered. Use force ruthlessly, they said, to gain the dictatorship of the proletariat. Once power was achieved, the rest would easily follow. The "bourgeois," the middle classes, the property owners, would be relentlessly suppressed to bring in the new economic order.

Bolshevism in Action.—The opportunity to apply these theories came with the break-up of the Tsardom in Russia. The Bolsheviks were prepared with a programme, and soon they obtained sufficient power to enforce it. This they did with ruthless efficiency. The old political and social order was exterminated. Private property was abolished; the old privileged classes were either killed off, frightened into flight, or forcibly absorbed in the new system. An entirely new system of government was devised, with new constitutional, legal, labour and other codes. The directing force in all action was the Communist party. The party encountered many difficulties in fulfilling its programme, and had to change position several times. The abolition of private ownership led to falling off in production; the peasants in particular were not easily made amenable to collectivist ideas, with the result that food shortage became acute on several occasions. Limited private ownership also had to be permitted, and, in industrial production, elaborate systems of rewards for output, usually strongly opposed by trade unionists, had to be devised. Intensive general education on Communist principles was initiated, and an attempt was made to abolish religion. On the positive side, economic planning was unduly adopted in order to make Russia industrially self-supporting; large scale government farms were created, with the two-fold object of producing food and abolishing the old peasant or "kulak" class.

The Communist Party.—It is difficult to say at any time what the exact form of the constitution in a dictatorship is, owing to its liability to sudden change. The constitution of the U.S.S.R. has undergone several changes, but in its latest form—the Stalin Constitution of 1936—it is democratic in appearance, but intensely autocratic in character. The U.S.S.R., consisting of eleven "republics" is stated to be a "socialist state of workers and peasants." Its chief legislative body is the Supreme Council, which consists of two chambers, the Council of the Union, and the Council of Nationalities. The Council of the Union is elected on the broadest franchise basis. The Council of Nationalities is a sort of federal organ representing the republics and certain other regions. The chief executive organ is the Council of People's Commissars, and the highest judicial organ, the Supreme Court of the U.S.S.R. But the essential element in the entire system is the complete domination of the Communist party. Political parties, in Marx's view, are the result of class interests ; but in a classless state, there is room for one party only. Thus no opposition party is permitted. The Communist party is highly organised. Its divisions correspond mainly to the territorial divisions in the state. There are local and provincial organisations and finally the Soviet Union Congress, the supreme organ of the Party. The Congress elects the Central Executive Committee, and a few other committees, and meets in plenary session at least once every four months. For the management of its affairs, the Central Committee elects a secretariat of five members, of whom one is the General Secretary of the party. The General Secretary is the leader of the party, and is the supreme ruler of Russia. The present Secretary is Stalin.

The Communist party consists of only a fraction of the Russian people ; but it arranges for members of the party to occupy all governmental positions of authority. Thus, whatever the constitutional bodies established by law may be, the actual control is in the hands of the party. The party is composed mostly of persons who were factory workers or peasants ; admission is strictly regulated, so that it is a new aristocracy. Discussion is permitted only in the party : no opposition or criticism is allowed from outside. The party controls not only the governmental machine, but every activity of life. A communist "cell," which is always in

close touch with a local or union party organisation, watches, and reports on all developments.

Communism and Democracy.—The creation, and continued existence of the U.S.S.R. is perhaps the severest challenge to democracy that the world has known. One of the main items of Marx's theory was the fight for democratic conditions, but as developed by the Bolsheviks, the Marxian theory has resulted in a rigorous dictatorship, in which a small minority of the population, directed by one man, occupies all the leading executive positions. There is no equality before the law; nor has class privilege been abolished. The U.S.S.R. is a land of privilege, like the Russia of the Tsars; only the privilege is now vested in the Communist party.

Other Dictatorships.—Unsettled economic and political conditions were the cause of two other types of dictatorship —Fascism in Italy and National Socialism, "Nazism" or "Hitlerism" in Germany. These dictatorships represent a swing to the opposite extreme; the chief cause of their existence was the prevalence of Russian communism or Bolshevism. All the dictatorships, however, though created for different purposes, operate on roughly the same principles.

Fascism : its Origin.—Fascism might never have become a real political force had it not been for the efforts of Russian communists just after the Great War to establish a dictatorship of the proletariat in Italy. Italy had emerged from the war with unfulfilled hopes. She had expected to gain colonial possessions and a footing on the eastern Adriatic; but this alone would not have created the conditions favourable to Fascism. The immediate cause of Fascism was economic; war debts, and budget deficits, added to the loss of productive power caused by the war, created a financial impasse. The returned soliders were dissatisfied, and labour unrest of a particularly violent character spread from end to end of the land. Workers took possession of the factories in many areas, and production kept falling. Italy, indeed, was rapidly passing into the chaotic condition which revolutionists thought favourable for the creation of a dictatorship of the proletariat. In the meantime, an Italian socialist, Benito Mussolini, had organised a "fighting band" (*Fascio di Combattimento*), with a view to securing for Italy the fruits of victory and compelling the government to make certain reforms. This group was composed of persons from various strata of society—ex-soldiers,

workers, students, literary and business men, and the sons of landowners and nobles. In 1922, Mussolini and his followers organised a march to Rome, which resulted in his capture of power, and the re-establishment of order. He gradually consolidated his position, and within a short time became the absolute master of Italy. In the early days of the movement, Mussolini had organised bands of his followers to help to keep factories working and to preserve order. With the increase in power of Fascism, these followers greatly increased in numbers and became an unofficial army. They wore a distinctive garb, and came to be known as "blackshirts."

The Creation of the Fascist State.—After the march on Rome, Mussolini quickly consolidated his position. At first he worked with other parties, and through parliamentary institutions. With increasing strength, however, he was able to disregard other political groups, and also parliament. Theoretically, the Italian constitutional forms are still in existence. According to the constitution the King is the chief executive power, and the legislative authority is the King and a parliament of two Chambers—a Senate and Chamber of Deputies. Actually, complete power is in the hands of the head of the Fascist party. The Grand Fascist Council determines who shall be elected to parliament, and all executive officials are responsible to the chief of the government, who is the leader of the Fascist party. What used to be the popular house of the legislature—the Chamber of Deputies—is now a "corporative" parliament. Organisation by corporations is a feature of the Italian regime; hence Italy is sometimes called a "corporative" state. The Italian people is divided into a number of corporations or guilds which have varied in number, covering the various activities of the people. Thus there are corporations of state employees, of disabled soldiers, and of the universities and primary schools. There is also a network of corporations covering agriculture, commerce, industry, credit, insurance, and the fine arts. These corporations, which are arranged on a hierarchical system, submit lists of names for appointment to the Chamber of Deputies. The list is usually twice as big as the number of seats allotted. The names are examined by the Fascist Grand Council and a list, which may include new names added by the Council, is ultimately returned to be chosen or rejected by the corporations concerned. If the approved list is not chosen, a

re-election is necessary. All laws are initiated by the Fascist party. The Chamber can only discuss them : it cannot reject them.

Fascist Theory.—There is no specific Fascist doctrine. Fascism is essentially a creed of action. "My programme" said Mussolini "is action, not talk." Nevertheless, Fascism, in addition to its practical aim of preserving order, and invigorating the national conscience by its active domestic and foreign programmes, and its concentration on spectacular displays and Fascist education in the schools, works on certain broad assumptions. One is the unquestioned sovereignty of the state. Though organised on a corporative system, the Italian state is a sovereign unity. There is no question of the corporations having rights independent of the state. Another is the unity of the nation. Fascism does not allow more than one party ; it assumes that the interests of the state and those of the individual are synonymous. A multiplicity of parties, interests or opinions weakens the state, according to Fascism. Similarly, Fascism expects labour and capital to work in harmony ; it admits of no class war. A third assumption is that democracy is useless. It is looked on as weak, vacillating and ignorant. No good government is possible in a democratic system because of the multitude of wills. Fascism claims to have substituted a successful corporate state for the "atomism" of democracy. Fascism also claims to be able to interpret the national will better than democracy. The masses, in the Fascist view, cannot formulate policy or determine what the requirements of national welfare are. The Fascists, chosen from the best elements in the population can not only say what is best for the people, but carry their policy out quickly and efficiently.

German National Socialism.—National socialism in Germany is also a product of war conditions. The defeat of Germany and the Treaty of Versailles, caused severe physical and psychological stress among the virile German people. Not only did Germany lose a great deal of territory, but she was subjected to heavy reparations, and to the occupation by foreign troops of one of her richest districts, the Ruhr. The economic consequences were disastrous, especially with respect to currency. The middle classes were ruined. There was widespread unemployment. Bolshevist propaganda was also active, for the communists saw in the economic chaos a chance

of creating a Marxian dictatorship. But the National Socialist Party (the full name is the National Socialist German Labour Party, usually abbreviated into "Nazi"), took control of the situation, through its leader, Hitler, who established order, and restored German national self-respect.

Nazi Theory.—German national socialism is, as the name implies, essentially nationalistic. Its origin lies more in psychology than in political or economic theory. Theoretically, national socialism professes to join the working or proletarian classes with other classes in a democratic state. Actually, it is an ideology devised of "Germany for the Germans." It is intensely patriotic in character : its economic policy is devised to secure a self-supporting country ; its political policy is directed towards the establishment of order internally, to fighting Bolshevism, and to gaining some of the territories lost in the war. It has also a distinctly racial side ; this has taken the form of anti-semitism and laudation of German or Nordic characteristics and types. Much of this is due to the prevalent idea that, though Germany was beaten in the War, she did not lose in the field. The defeat, the Nazis hold, was caused by subversive propaganda behind the lines ; similarly, she ascribed many of her financial troubles to the Jews. Like the communists and Fascists, the Nazi party has been at great pains to educate the youth of Germany in nationalistic and patriotic channels. No opposition is allowed, and drastic measures are adopted to prevent intrigue and dissension.

Nazi Organisation.—The Nazi party organisation is organised on a basis of headquarters and subdivisions ; the leaders of subdivisions are nominated by the central headquarters. The organisation controls workers' organisations, and it has a corps of supporters similar to Mussolini's black shirts. The Nazi party is controlled by Hitler, who is termed the "Leader." He controls not only the party, but the government machine. Using the constitution, he was able not only to be made Chancellor, but to have an Enabling Act passed permitting him and his Cabinet to make laws by ordinance. The sole legislative authority for Germany is the Reichstag, and Hitler has secured overwhelming support in that body. The federal states, by special laws, were brought directly under Hitler, and his cabinet. Germany is thus a unified, centralised organisation.

Common Features of Dictatorships.—Russian commun-

ism, Fascism and German National socialism share several characteristic features. In the first place, they all believe that the end justifies the means. Hence, though in different degrees, they all justify violence as a method of suppressing opposition. Force, in the ultimate issue, they regard as the central essential of the state. Lenin defines the state as "the organisation of violence for holding down one class." Secondly, they believe in the abolition of class interests, but, whereas communism sets out to secure this by the class war and the violent elimination of all classes but one, Fascism and Hitlerism believe in assimilating all classes into one national whole. Thirdly, each creed freely uses forcible methods to maintain its hegemony—such as the boycott, physical compulsion through segregation in prisons and detention camps, or, in extreme cases execution, censorship, and intimidation. Fourthly, each dictatorship realises the force of the essential element in democracy—the will of the people. From this ensue the intense concentration on party education, and the free use of propaganda and of spectacular party displays. Each dictatorship also is at pains to try to justify itself in the eyes of the rest of the world, but Russian communism is also active in attempting to convert the rest of the world to its own view. It carries on its campaign into foreign countries in many ways, both open and secret. Another common feature of dictatorships is their intensive domestic, social and economic programmes. In this manner they hope to have the people behind them, as indeed they appear to have, for at the moment it seems that at least Fascism and German National socialism are securely established with the active consent and co-operation of the preponderating mass of the Italian and German peoples. Russian communism on the other hand, though firmly in power, seems to require periodic drastic purges of dissentient elements to maintain its position.

Conclusion.—Dictatorships have their imitators in most other countries, but so far have made little headway. There can be little question that the tendency towards dictatorship is kept alive by the fear of disorder and national disruption which is a legacy of the Great War. In particular, the countries where democracy has stood the test of time fear a cataclysm like the Russian revolution, or its sequela, the dictatorship of the proletariat.

The dictatorship of the proletariat, than which no other

modern political catch phrase has aroused more violent animosities, represents the extreme limit of anti-democratic theory. It professes to recognise, and to give civic rights to only one class, manual workers. Some communists would widen the definition of worker to include all classes of workers, whether manual, intellectual or professional, but the true Marxian allows civic rights and power to manual workers only. Democracy on the other hand recognises differences among mankind, differences in ability, temperament, capacity and attainment. Such differences indeed are essential to human nature. There is no such thing as one class in nature. Democracy professes to give justice to all by allowing each citizen a voice in affairs, and by according to all equality before the law. Fascism and Hitlerism, while recognising class differences, refuse freedom of opinion and general equality before the law ; hence they also arouse violent antipathy in successful democracies. In an ordered democracy there is no room for extreme creeds. Democracy is a system of government by compromise which, by adjustment of claims and interests after discussion, secures reasonable justice for all.

5. CABINET OR RESPONSIBLE GOVERNMENT AND PRESIDENTIAL OR NON-RESPONSIBLE GOVERNMENT

The two leading modern democracies, Great Britain and the United States, have different types of executive government. In Great Britain there is a true parliamentary type —the Cabinet, which is responsible to the House of Commons. In the United States, the head of the executive, the President, is not responsible to the legislature. Both democracies have survived the period of post-war settlement, and this period has provided a good test of their strength or weaknesses.

Cabinet Government in the United Kingdom.—In the English system the Cabinet is the head of the executive as well as the directing power in the legislature. The Cabinet is chosen from the political party which commands the majority in the House of Commons. The head of the Cabinet, the Prime Minister, is appointed by the King and after his appointment he selects his ministers who also are technically appointed by the King. The Cabinet is representative of both the House of Lords and the House of Commons, but is responsible only to the House of Commons. As a rule it includes

the heads of the chief executive departments of the government. Indirectly it may be said that the Cabinet is chosen by the House of Commons for, although the Prime Minister can exercise his own will in the matter of choice, he is bound to select the chief men of the political party in power The Cabinet is jointly responsible to the House of Commons for the action of its individual members and, in the case of defeat by the House, the Cabinet must resign. The Cabinet, moreover, has the power, through the Prime Minister, to advise the King to dissolve the House of Commons. Although the Cabinet is but a committee of the legislature, it really is its master.

The Cabinet system in Great Britain is a direct contradiction of the theory of the separation of powers, of which we shall speak later. The theory of the American constitution is that the legislative, executive and the judicial branches of government should be independent of each other, but in the English constitution, both the legislative and the executive control lies in the Cabinet. The Cabinet links together the executive and the legislature. In theory the King is the head of the executive, but in actual practice the King is not responsible for the acts of his ministers. The Cabinet also is a permanent link between the people as a whole, and the legislature. In virtue of its power to recommend a dissolution of Parliament, it helps to preserve harmony between the will of the people and the legislature. Further, during the Great War, by the Defence of the Realm Act, the Cabinet was able to interfere with the ordinary rights of the citizens as enjoyed in peace time. During the War it was able to circumvent the fundamental fact of English liberty, namely, the rule of law. This action was necessary in order to strengthen the executive, as a strong executive is essential for the conduct of war.

Presidential Government in the United States.—According to the American constitution, the President of the United States is the independent executive head. The founders of the constitution recognised that an essential of good government is a vigorous head of the executive. To make the executive independent from interference, the Americans adopted the theory of the separation of powers. They established an independent legislature, an independent executive and an independent judiciary. The President is head of the

American executive. He is elected for four years and, according to the custom of America, cannot be elected more than twice. His powers are definitely limited by the constitution. Some of his executive authority he holds in conjunction with the Senate; the greater part of his authority he exercises by himself. He appoints his own ministers and can remove them. His ministers are not members of the legislature nor are he and his ministers responsible to the legislature for their acts. The limits on the power of the President are: (*a*) the limits laid down in the constitution; (*b*) the limits laid down by the statute law of the land (if the President or any of his ministers exceed their legal authority their acts will be nullified by the courts); and (*c*) the political limits. The President is elected by the people. He is the nominee of a political party and as such to a certain extent must try to please the party, but as no President may be re-elected more than once, the political limit is only temporarily effective.

Comparison.—In time of peace Cabinet government has several advantages. In the first place, it secures men of outstanding ability as leaders in the legislature and in the executive. In modern democracies it is difficult for men without ability to rise to Cabinet rank. The Prime Minister especially must have qualities which mark him out above his fellow-men. Not only is the Prime Minister responsible for the making and the execution of the laws, but he is also the leader of his own party. As a leader of his own party his policy very largely is the policy of the party. The Prime Minister must therefore be a man of commanding personality; and it is to his advantage to have round him the ablest men we can find.

In the second place, the Cabinet system of Great Britain is educative. The party system, on which it is founded, demands high organisation, and the duties of party organisations are to win elections. To win elections means securing the votes of the people, and, as each party is as keen as the other to win, the people have always before them the various sides of the questions before the country. In America, too, the party system prevails, but in the Cabinet system of Great Britain the responsibility of the Cabinet to the House of Commons, or its ability to secure the majority of votes in the House gives an additional zest to party politics. In

America the executive, once in office, cannot be turned out by any party till the period of office is over. In Britain the Cabinet may be turned out of office by an adverse vote at any time.

In the third place, the Cabinet, by virtue of its position as head of the executive and as directing power in the legislature, is able to carry through measures which *for executive reasons* are necessary or advisable. In America Congress need not carry through a single measure recommended by the President.

In the fourth place, the Cabinet is continuously responsible for its executive actions. The members of the House of Commons by means of questions, motions, etc., exercise continual supervision over the executive departments.

In the fifth place, the debates in the House of Commons are party debates. They give both sides of the question at issue, and, to avoid defeat, the Cabinet has to present as sound a case as possible before the House.

The Great War showed also that the Cabinet system is flexible. It is well known that in times of crisis, such as a great war, one directing head is better than many heads. The government in England was able to adapt itself to the new situation created by the war by evolving from within itself a small body whose special duty it was to conduct the war. But the advantage of flexibility was more than discounted by the lack of unity which became apparent in England soon after the beginning of the war. Undoubtedly the greatest defect of Cabinet government is that it may not be able *at once* to adapt itself to meet great emergencies, such as wars.

The Experience of the Great War.—Presidential government is shown at its best in time of war. Once war was declared in America, President Wilson became a dictator. He was able to direct all resources of the United States without any interference to one end. It is true, particularly in the very early stages of the war, that the Cabinet was able to do very much the same for Great Britain, but as the war progressed, it became more and more necessary to concentrate the power of direction in the hands of fewer men. Throughout the whole war, the Cabinet in Great Britain was subject to the will of the House of Commons. If the House of Commons had so cared, it might have turned the Cabinet out

of office at any critical period. As a matter of fact, in the later stages of the war, it is well known that there were considerable dissensions in the Cabinet and in Parliament itself. One Prime Minister had to resign, and several appointments were made not for purely executive reasons, but from the desire to conciliate the party leaders in the House of Commons. While the President of the United States belongs to a political party, he is completely independent while he holds office. In war he is an autocrat. He dictates to Congress legislative measures necessary for the conduct of war, and on the executive side he can carry on his work without fear or favour.

It may be said that a dictatorship of this kind is a danger to public liberty. The liberty of the American citizens was no more adversely affected during the war than the liberty of the British. In both Britain and America everything had to be subservient to success in the struggle, and the old ideas of individual liberty were completely submerged for this end.

It is clear, then, that in times of war the presidential is the better system. Although both the Cabinet and the president are elected by party votes, the president is able to shake himself free from party ties more easily than the Cabinet. In Cabinet government, too, a great deal of time may be lost in useless discussion. During the Great War a considerable part of the time and energy of those responsible for its conduct was taken up by meeting objections to various points raised by members of the legislature. While discussion in times of peace is one of the benefits of Cabinet government, in time of war it is one of its greatest defects. On the other hand, it is always possible for Cabinet governments to take dictatorial powers to themselves in times of crisis. When they are given such powers by the legislature, they are in a stronger position than presidential governments, because they are confident that the legislature is behind them.

Presidential government of the type existing in the United States, although it is more beneficial in war, does not appear to be so beneficial in time of peace. Thus in the United States of America, the great Presidents have been those men who have had to cope with national crises. The history of the United States has been marked by relatively few national crises, so that the good qualities of presidential government have not been frequently tested. In times of peace the President's general duties are to execute the laws

as efficiently as possible. His executive work is largely done by his ministers, and if he is careful in his choice of ministers, the tenure of his office may be uneventful and easy. The only statesmanlike act which the President is called upon to do in normal times is to review the position of the country in his presidential messages to Congress. These messages may be or may not be acceptable to Congress. The President has no power to compel Congress to pass any law. The future of his messages is entirely at the mercy of the good feeling of Congress. By the party system in the United States, the President usually belongs to the same political party as the majority in Congress for the time being. But although the party organisation in the United States is the strongest in the world, the actual dividing lines between the parties in matters of political opinion or proposed legislation are so indistinct that the party similarity of President and Congress is no guarantee that the President's views will prevail. When they do not, the result is an unfortunate rift in the national life, which causes a feeling of uncertainty and insecurity.

CHAPTER XII

THEORY OF THE SEPARATION OF POWERS

1. STATEMENT OF THE THEORY

The Functions of Government.—In every government there is a large number of activities or functions, which are usually classified into legislative, executive and judicial. The legislative function is concerned mainly with the making of laws, or the laying down of general rules to guide those within the state. The executive "executes" or carries out these general rules; the judicial decides how these rules apply in given cases.

Montesquieu's Statement of the Theory of Separation of Powers.—The classical statement of the theory of the Separation of Powers is given by Montesquieu in the *Spirit of the Laws* (1748), in the course of his analysis of the constitution of England. He says :—

"In every government there are three sorts of power: the legislative; the executive in respect to the things dependent on the law of nations; and the executive in regard to matters that depend on the civil law.

By virtue of the first, the prince, or magistrate, enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.

(The political liberty of the subject is a tranquillity of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted that one man be not afraid of another.)

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

There would be an end of everything, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."

Blackstone's Statement.—The English jurist Blackstone's expression of the theory is also much-quoted:—"Whenever the right of making and enforcing the law is vested in the same man or one and the same body of men, there can be no public liberty. The magistrate may enact tyrannical laws and execute them in a tyrannical manner since he is possessed, in his quality of dispenser of justice, with all the power which he as legislator thinks proper to give himself. . . . Were it (the judicial power) joined with the legislative, the

life, liberty, and property of the subject would be in the hands of arbitrary judges whose decisions would be regulated only by their opinions, and not by any fundamental principles of law, which, though legislators may depart from, yet judges are bound to observe. Were it joined with the executive, this union might be an over-balance of the legislative."

Historical Divisions of " Powers."—Although Montesquieu's statement was made in the 18th century, the existence of various "powers" was recognised long before then. Aristotle, Cicero, Polybius and other writers of Greece and Rome distinguished various functions in government. Aristotle (in *Politics,* IV, 14) divided them into—

(1) Deliberative.
(2) Magisterial.
(3) Judicial.

The first, deliberative, was concerned with such general questions as war and peace, treaties, law-making, finance, death-punishment, exile and confiscation. Deliberation was also concerned with general political questions. The scope of the deliberative function of government was thus very wide including more than the modern legislative function. Some modern writers use the term deliberative to denote a function of government which is not properly speaking the legislative, but the power behind the legislative power, i.e., public opinion, the press, etc., which is the thinking function preliminary to legislation. Aristotle's magisterial function is roughly equivalent to the modern executive ; the third is our modern judicial.

Aristotle's division is a rough one and as such it represents the actual practice of his time. In Greece there was no clear distinction between the "powers." The Assembly in Athens considered the laws (deliberative) and made the laws (legislative), and it also had wide executive and judicial powers. The archons were executive officers chiefly, but they were also judges. Likewise in Rome, there was no legislative clearly demarcated from the judicial or executive, although there was not as much concentration in one body as in Greece. The comitia in Rome was predominantly legislative, yet it did both executive and judicial work (e.g., it decided on death sentence appeals). The magistrates were mainly executive, but by their edicts they were legislators and they had also jurisdiction as judges. The Senate was

both legislative (its resolutions had the force of law) and executive. Polybius, the Greek historian of Rome, gives the idea of separation when, in describing the constitution of Rome, he praises the balance of power between senate, consuls and tribunes.

In the mediaeval world there was little distinction. The king was regarded as the maker of laws, the supreme executor of the laws and the supreme judge. This theory held also for subordinates of the king. In England, for example, the king was the final repository of justice. For purposes of administration he had to delegate powers, e.g., to the Lord High Chancellor, who was technically the "keeper of the king's conscience" and as such the dispenser of equity in the king's name.

Bodin, in *The Republic*, voiced the theory much in the same way as Montesquieu did later. He urged especially that judicial functions should be given to independent judges. This in fact was an actual historical tendency, for in France the king had, in part, given over the administration of justice to tribunals, reserving powers of confirmation to himself. (Bodin argued that, if the king were both law-maker and judge, then a cruel king might give cruel sentences. Justice, he said, and the prerogative of mercy should not be mixed up together.) Later, in English history, the union of the powers was shown by the "suspending" and "dispensing" powers whereby the arbitrary earlier Stuart monarchs, in virtue of their combining legislative, executive and judicial functions in themselves, could depart from law either in their own cases or in the cases of others. The reaction against this is seen in the constitution of the Protectorate where the executive and legislative were separated. Locke, whose theories of government were meant to justify the Great Rebellion, divided the powers into legislative, executive and federative.

The Modern Division.—The division into legislative, executive, and judicial is not universally accepted by modern writers. Other powers have been given, for example :—

(*a*) The deliberative, as distinct from the legislative (The making of laws, however, really includes this, though it is a useful distinction to make in order

to study the organisation of the intellectual and moral forces in a state.)

(*b*) The moderating power, or co-ordinating power.

(*c*) The administrative power.

(*d*) The inspective power.

(*e*) The representative power.

Bluntschli divides the powers of government into legislative, administrative or governmental, and judicial, but to these he adds two other groups of functions or organs, each subordinate to the administration or government—(*a*) superintendence and care of the elements of civilisation (in German, Staatskultur); (*b*) the administration and care of material interests (the earlier sense of Political Economy), Bluntschli regards both these matters as not properly belonging to the administration; they are outside government, and all that government can do in their case is to superintend and foster. The place of such additional functions depends on the more fundamental conception of the province of government.

Professor Dealey's Classification.—A modern American writer, Professor J. Q. Dealey, divides the functions thus:—

(1) The executive, from which is differentiating,

(2) The administrative,

(3) The law-making department, from which should be distinguished the following:—

(4) The legal sovereign,

(5) The judicial system, from which is separating (in the United States),

(6) A special court for the authoritative interpretation of the written constitution, and

(7) The electorate, which is steadily increasing its powers at the expense of the three historic departments of government.

Such a classification opens the way to almost endless subdivision, all of which may be useful for description, but not for general classification. There is no essential difference between the ordinary judicial system and constitutional judicial system. Nor, again, is there any reason why the classification should stop at the electorate. The electorate in modern democracy is all important, but as an electorate it does not make laws. If the electorate is given as a subdivision, then the pulpit, press and platform might be added

as well. Further, if the legal sovereign is separately classified, still more should the political sovereign be mentioned.

A Twofold Division.—Some modern writers (mainly French) prefer a twofold to a threefold classification. They give a division into legislative and executive, regarding the judicial as a part of the executive. The writers who give this dual theory usually subdivide the executive into purely executive, administrative, and judicial. The purely executive consists in supervision and direction, the administrative in the actual performance of the details of the work; the judicial is the interpretation of the general laws and their application to individual cases. Continental theory and practice draw a sharp distinction between the judicial executive and the administrative executive. The system of administrative law, by which public officers are subject to a separate law and legal procedure from private individuals, is the deciding factor in this distinction.

Criticism.—To regard the judicial function as part of the executive is unsound. The reason for the union is that most legal decisions as a rule involve executive action. A judge says whether a law applies or how it applies to a given case, and action is taken accordingly. Law courts make orders, but that is not essential to the judicial function. Many judicial decisions do not involve execution. In certain spheres of legislation there is no executive action, whereas in even ordinary cases actual execution (as between parties in a law suit) does not depend on the courts. There is a distinct connection between the executive and the judicial: they cannot be separated from each other absolutely: nor can the legislative and executive or legislative and judicial. Judges make laws by setting up precedents, and to refuse the distinction between legislative and judicial would be as logical as to refuse that between executive and judicial. The theory of the Separation of Powers is not an absolute rule; properly understood, it indicates only general theoretical and practical tendencies.

Practical Effect of Montesquieu's Theory.—The practical effect of Montesquieu's theory was very marked. Among the many doctrines of liberty which have influenced men's minds, this more than any other has affected the actual working of government. Concentration of power favours absolute monarchy or despotism, and after the blows dealt to monarchy in England in the seventeenth century and in France in the

eighteenth century, it was natural that some practical theory of government should be produced. The social contract of Locke was democratic enough, but it was a mere theory, and partially an unsound one. The separation of powers, however, was a practical issue of the most far-reaching importance. Montesquieu's doctrine became a political gospel which bore fruit in the reorganisation of governments in France after the Revolution and in the United States after the War of Independence.

In America.—Most of the leaders of opinion in America after the War of Independence favoured the theory. The individual state constitutions adhered to the principle as far as possible. One of the most typical is the constitution of Massachusetts (1780), which declares that in the government of Massachusetts "the legislative department shall never exercise the executive and judicial powers, or either of them, the executive shall never exercise the legislative and executive powers or either of them to the end that there may be a government of laws and not of men." In France, too, the Declaration of Rights, at the time of the French Revolution, (expressly accepted the theory, saying that where there is no separation of powers there is no constitution.) The actual scheme formulated as a result was a legislature not dissolvable by the head of the executive; executive officers could not sit in the legislative houses, and judges were elected: The king had no initiative and had a very limited veto.

2. CRITICISM OF THE THEORY

Absolute Demarcation is Impossible.—The greatest defect of the theory of the Separation of Powers is that, as expressed by Montesquieu and Blackstone, it states as a universal theory what can only be partially realised in fact. The theory expresses some general tendencies, but there can be no rigid demarcation between the so-called "powers." The state is an organic unity, and just as the various parts of the body depend on each other so the various parts of the state machinery are interrelated. A glance at the actual practice of governments shows this. It may also be noted, considering that England did not resort to an absolute separation of powers, and that England was the example referred to by Montesquieu, that he did not intend to advocate the entire disjunction of the powers or departments as has been done by so many of his followers. As Madison says (in the *Federalist*)

Montesquieu's theory meant that where the *whole* powers of one department are exercised by the same hands which possess the *whole* powers of another department, the fundamental principles of a free government are subverted.

America, an Example.—In the government of the United States, where the theory was consciously adopted, the legislature is not absolutely separated from the executive. The head of the executive, the President, exercises very considerable influence over the legislature (Congress). He has a partial veto over acts passed by the legislative bodies, and although not himself a member of Congress, by his presidential messages he can influence the course of legislation. The Senate also has certain executive functions, e.g., ratification of treaties and of certain appointments.

The President, with the advice and consent of the Senate, appoints the federal judges, and the federal courts have an enormous influence on both the legislature and the executive. In a federal form of government the judicial branch of government occupies a unique place in relation to both the executive and the legislature. The existence of the federal constitutional law colours every act of the legislature. Constitutional law being above ordinary law, the courts have to decide whether legislative and executive acts are *intra vires*, that is, within the legal powers of the legislature or not. The same is true of the judiciary and executive. In fact the all-pervading nature of the judicial element shows the complete impossibility of absolute separation. In the state governments in the United States separation is more marked. In the states the system of separate election of the various legislative, executive, and judicial officers of government prevails ; but even there the governors have as a rule certain powers of veto over the legislatures, and the system itself has proved far from satisfactory, particularly in the election of judges and subordinate executive officers.

In the United States the whole system of party organisation, the most elaborate in the world, has grown up as a protest against the rigid demarcation of powers insisted on by the founders of the American Constitution. Where, as in America, there is no guarantee that the head of the executive and the majority of the legislature will be in general agreement, there is the possibility of friction and deadlocks. The party system has grown up to ensure that the legislative

houses and the President should be of the same political ideas, and thus secure harmonious working in the government machine.

The British Constitution.—The British Constitution is the best example of the non-applicability of the theory. The Lord Chancellor, who is at once a member of the Cabinet, of the House of Lords, and the head of the judiciary, is a standing refutation of the doctrine of separation of powers. This is all the more peculiar, because Montesquieu greatly admired the British system. Instead of the executive and legislative being separate in Britain, they are virtually one. Nominally, of course, the legislature (the King-in-Parliament) is distinct from the executive (the King and ministers), but as a matter of fact the controlling force in both executive and legislative is the Cabinet. The Cabinet consists mainly of the heads of departments who carry on the actual executive work of government, and, as a Cabinet, they guide the whole course of legislation. The House of Lords, which is the upper chamber of the legislature, is also a supreme court of appeal. Thus in Montesquieu's favourite type lies the negation of his theory. The union of powers in the Cabinet, however, was not so marked when Montesquieu wrote as it is now. Blackstone, as a jurist, did not recognise the Cabinet, which is an extra-legal organisation.

In France.—In France there is no thorough-going separation. The President is elected by the two houses of the legislature convened together. His ministers are very much like the English Cabinet, only as ministers they have a separate name ("Council of Ministers"), and have a slightly different organisation from their organisation as a Cabinet. The members of the Cabinet are the representatives of the majority in the popular house, and in practice they are the ministers of the President. The Cabinet is a political body, which controls the President : the Council of Ministers are his servants ; yet they are the same body. The President is head of the executive : the executive departments are created by his decree : yet no decree of the President holds good unless it is agreed to or countersigned by the minister who is head of the department affected. The President has no veto over legislation, but he can demand reconsideration of a measure, and with the consent of the Senate he can dissolve.

the Chamber of Deputies. He has also considerable powers in matters of adjournment and in re-election.

In Germany.—In the pre-war Germany, the Emperor was the head of the executive for the Empire; but he was also King of Prussia and as such could influence the legislation of the Empire in any way he pleased by means of his all-powerful Prussian representation in the Bundesrath. The Bundesrath, too, had large administrative powers. As the federal organ it had the oversight of imperial administration. It had large powers of appointment, including appointments to the chief court or Reichsgericht. It was also a judicial body with extensive powers.

In Dictatorships and Cabinet Governments.—In dictatorships, there is, in practice, complete fusion between the legislative and judicial functions; and it is alleged also that the courts in such governments are influenced by the executive. There is also combination of the "powers" in the cabinet system, in which the executive, or cabinet, is responsible to, and forms part of the legislative.

Administrative Law.—On the continent of Europe the prevalent system of administrative law is a contradiction of the theory of Separation. By this system government officials, in respect to their official acts, are subject to a separate judicial process from ordinary citizens. They are judged by administrative courts which are composed partly of executive officials and partly of judges.

Government the Organisation of an Organic Unity; Liberty has other Causes.—In no constitution in the world can there be absolute separation. The functions of modern governments act and react on each other like the parts of a delicately constructed scientific instrument. A state is an organic unity, and any attempt to break up the unity by absolute separation of the parts must necessarily fail. Actual experience has shown that where the most thorough-going attempts at separation have been made, sores have broken out in the body politic. Where the constitution, as in the United States, is difficult to amend, extra legal organisations have grown up to remedy the sores. Liberty, moreover, does not depend on the mechanical separation of powers. Great Britain, where the organisation of government is a complete negation of the theory, is one of the freest countries in the world. The United States, where the theory has been tried, is also a very free country, which

points to the fact that freedom depends on factors other than the separation of powers. Freedom depends on the spirit of people and their laws and institutions, not on the mechanism of institutions themselves. In Britain, the rule of law secures freedom ; and America borrowed the legal principles of Britain. Both peoples are free in spirit, therefore their institutions are free.

Departmentalism.—Again, as John Stuart Mill points out in his *Representative Government,* if every department were rigidly cut off from every other department of government, one department would be so jealous of the other that it would try to defeat that department's objects. The result would be loss of efficiency. This argument would be particularly true where an executive was opposed in political opinion to a legislature. Either consciously or unconsciously the executive would not carry out the laws of the country according to the spirit in which the laws were passed.

The Theory may even be Harmful.—The theory, further, may prove actually harmful in practice. In the United States, the election of judges and executive officers has resulted in much evil, and these elections were meant primarily to secure the independence of the various branches of government. What has happened is that the individual citizens have suffered in order to test a theory. The principle of separation may thus be actually antagonistic to liberty.

Combination of Functions.—Further, each department at once exercises all three functions. An executive officer has to judge in every act whether it is legal or not. Likewise he may make many bye-laws. It is impossible to cut off any one function or any combination of functions from the others.

The "Powers" not Equal.—Again, the theory leads to the mistake of the equality of the powers. The departments or "powers" are not equal. The legislative is superior : it makes the frame-work in which the machinery operates. The expression of the will must come before the movement of the hand ; as Bluntschli says : "As the whole is more than any of its parts or members, so the legislative power is superior to all the other particular powers." The supremacy of the legislative is particularly confirmed by its power over the purse. By its control over finance it limits and controls the executive, however theoretically independent the executive may be.

One point of separation which the theory demands has

been adopted in the independence of the judiciary. How far the judiciary is actually independent will be discussed later.

Conclusion.—The theory of the Separation of Powers thus indicates only general tendencies. It is not an absolute law, and experience proves that, where it has been most thoroughly applied, it has not proved satisfactory. The cause of its existence, the liberty of the people, does not depend on the rigid division of powers, but upon other things.

CHAPTER XIII

THE ELECTORATE AND LEGISLATURE

1. THE ELECTORATE

Direct and Indirect Democracy.—We have seen that democracy is of two kinds, direct and indirect. In direct democracy every citizen takes a direct part in making the laws of the state; in indirect democracy the citizens elect representatives to voice their opinions. Modern states are much larger in area than the old Greek city states, and it is a physical impossibility for all citizens to meet together to propose or discuss measures as the Greeks did. Modern democracy rests on representation, the system by which citizens, instead of attending the law-making assembly themselves, elect others to act for them.

The Electorate.—In every modern state there is an electorate—the people who are qualified by the law of the state to elect members of the legislature. In modern democracies there is considerable variation in electoral laws. In some states theoretically every adult citizen has a vote; in others many are disqualified from voting. The tendency of democracy is to widen the electorate. "One man, one vote" is a central maxim of democracy, and in most modern democracies women are allowed to vote on equal terms with men.

Universal Adult Franchise.—During the nineteenth century, which saw very rapid expansion of the franchise in western countries, an enormous amount was written on theories of representation. In the early years of the century, only the most advanced thinkers ventured to put forward the theory

of adult franchise, which is now a central element in democratic theory. The idea that every citizen should have the right to vote follows logically from Rousseau's doctrine of the general will, but even the leaders of the French Revolution did not venture to put the theory into practice. The western world was not yet ready to commit itself to the power of the masses, largely because education was not sufficiently advanced. With the gradual spread of liberal ideas, the franchise was made wider, but, even in the latter half of the century, theorists found it difficult to reconcile adult franchise with illiteracy. The turning point in franchise theory is the introduction of universal and compulsory education during the later nineteenth century. Education of the masses removed the last obstacle to universal franchise. Many well-known political writers of last century were strong opponents of universal franchise—writers such as John Stuart Mill, Lecky, Sir Henry Maine, Sidgwick and Bluntschli.

Arguments for Adult Suffrage.—The main arguments in favour of adult suffrage have been well summarised by the Indian Franchise Committee, which submitted a report to the Prime Minister of Great Britain, in 1932, containing recommendations regarding the franchise qualifications to be included in the constitution which came into force in 1937. "The first is that adult suffrage is the only method by which absolute equality of political rights can be secured to every adult citizen. Any form of restricted franchise necessarily infringes the principle of equality between individuals in some degree. The second reason is that adult suffrage is the best means of securing that the legislatures represent the people as a whole. The third reason is that it solves, so far as the electoral roll is concerned, the difficult problem of securing the fair representation of all elements of the population, communal and racial, rich and poor, town and country, men and women, depressed classes and labour. Whether adult franchise results in fair representation in the legislatures, depends on the system of representation adopted, as the endless controversies, in the west no less than in India, about proportional representation, the second ballot, reservation of seats, and special or separate electorates, abundantly prove. The fourth reason in favour of adult franchise is that its adoption avoids the necessity for devising special franchises, for example for women, or. the depressed classes, may discourage the formation of groups

based on sectional, communal, or similar interests, and will facilitate the development of parties based on political ideas and ends, which are the true foundation of sound political life."

Excluded Classes.—Universal adult franchise is not strictly speaking universal. Generally speaking, it means that every adult citizen, male and female, who is not a lunatic or criminal can exercise the vote. The meaning of adult varies from country to country. The commonest adult age is twenty-one, but in some cases the limit is as high as twenty-five. In all states certain classes of residents are excluded. In the first place, the franchise is confined to citizens, either natural-born or naturalised. Aliens are excluded, for the reason that they own allegiance to another state; they are not properly speaking citizens. In the second place, persons who either cannot understand the elementary relations of things—lunatics—are excluded. Criminals are also excluded, for the reason that they are not good citizens. People who break the law should not be allowed to take part in making the law.

The Educational Qualification : John Stuart Mill's Statement.—In many states, there is still a literacy or educational qualification. The theory underlying the educational qualification is best stated by John Stuart Mill, in a well-known passage in his *Representative Government*, thus :—"I regard it as wholly inadmissible that any person should participate in the suffrage without being able to read, write, and I will add, perform the common operations of arithmetic. Justice demands, even when the suffrage does not depend on it, that the means of attaining these elementary acquirements should be within the reach of every person, either gratuitously, or at an expense not exceeding what the poorest who earn their own living can afford. If this were really the case, people would no more think of giving the suffrage to a man who could not read, than of giving it to a child who could not speak ; and it would not be society that would exclude him, but his own laziness. When society has not performed its duty, by rendering this amount of instruction accessible to all, there is some hardship in the case, but it is a hardship that ought to be borne. If society has neglected to discharge two solemn obligations, the more important and more fundamental of the two must be fulfilled first : universal teaching must precede

universal enfranchisement. No one but those in whom an *a priori* theory has silenced common sense will maintain that power over others, over the whole community, should be imparted to people who have not acquired the commonest and most essential requisites for taking care of themselves, for pursuing intelligently their own interests, and those of the persons most nearly allied to them. This argument, doubtless, might be pressed further, and made to prove much more. It would be eminently desirable that other things besides reading, writing and arithmetic could be made necessary to the suffrage; that some knowledge of the conformation of the earth, its natural and political divisions, the elements of general history, and of the history and institutions of their own country, could be required from all electors. But these kinds of knowledge, however indispensable to an intelligent use of the suffrage, are not, in this country, nor probably anywhere save in the Northern United States, accessible to the whole people; nor does there exist any trustworthy machinery for ascertaining whether they have been acquired or not. The attempt, at present, would lead to partiality, chicanery, and every kind of fraud. It is better that the suffrage should be conferred indiscriminately, than that it should be given to one and withheld from another at the discretion of a public officer. In regard, however, to reading, writing, and calculating, there need be no difficulty. It would be easy to require from every one who presented himself for registry that he should, in the presence of the registrar, copy a sentence from an English book, and perform a sum in the rule of three; and to secure, by fixed rules and complete publicity, the honest application of so very simple a test. This condition, therefore, should in all cases accompany universal suffrage, and it would, after a few years, exclude none but those who cared so little for the privilege, that their vote, if given, would not in general be an indication of any real political opinion."

With the spread of universal and compulsory education, the exclusion of illiterates from the franchise is gradually losing its meaning. In most modern democracies, all adults are literate, hence no literacy qualification needs to be prescribed. It still is in force however in some advanced countries, for example, in parts of the United States of America, where it is used at times for party or racial purposes. In

India, where a big proportion of the population is illiterate, literacy is not an essential qualification. In some cases it has been prescribed as a qualification in itself, i.e., a person may be a voter if he or she can prove literacy, irrespective of any other qualification ; but a person possessing another qualification, such as the payment of municipal or union board rates, is not disqualified, if illiterate.

Other Excluded Classes.—Bankrupts are excluded from the franchise in many states. Such exclusion is not universal. In India for example, bankrupts were excluded under the Montagu-Chelmsford constitution, but the disqualification was removed in the Government of India Act, 1935. Bankrupts, however, are not allowed to be candidates. Persons guilty of corrupt practices or other offences in connection with elections are usually excluded from the franchise. Such exclusion is of the nature of a penalty. Usually provision is made for re-enfranchising such persons after a period. In some states government servants are excluded from the vote —particularly soldiers on active service. Large bodies of men congregated together, servants of government, might unite to overcome the government ; or the influence of electoral excitement might undermine the discipline so necessary in an army. In many states government officials responsible for the conduct of elections are debarred from the vote. Exclusion in their case is aimed at securing fair-mindedness and neutrality in the conduct of elections.

The Property Qualification.—A very common qualification for the exercise of a vote is the property qualification. The theory underlying the property qualification is that only those who own a certain amount of property may fairly be regarded as having a stake in the country. One aspect of this qualification is that only those who pay taxes should be allowed to vote. John Stuart Mill, in his *Representative Government,* holds this view. "It is important," he says, "that the assembly which votes the taxes, either general or local, should be elected exclusively by those who pay something towards the taxes imposed. Those who pay no taxes, disposing by their votes of other people's money, have every motive to be lavish and none to economise as far as money matters are concerned, and any power of voting possessed by them is a violation of the fundamental principle of free government,

a severance of the power of control from the interest in its beneficial exercise."

Taxation and Representation.—If it is true that only those who pay taxes should be electors, modern democracy holds it equally true that there should be no taxation without representation. If an individual pays taxes, it is now recognised that he has a right to have a voice in legislation. It will be remembered that this principle was the basis of the American War of Independence.

In modern democracies the control of national finance lies usually in the lower house of the legislature, i.e., the house which is elected directly by the people. In Britain, for example, the House of Lords has no voice in the annual budget, so that in a sense, although the Lords compose a legislative chamber by themselves, they really are unrepresented in financial matters.

Sex Qualification.—Another test, which is rapidly disappearing, is sex. In most states women are admitted to the franchise on the same terms as men ; and where they are not, as, partly, in India, the disqualification arises either from the special position of women in society, as in the case of Muslims, or because of practical difficulties in recording their votes of elections.

Modern Practice.—The actual practice of modern governments will be seen in the analysis given in later chapters of the constitutions of several states. The actual laws prevailing may be shortly summarised here :—

1. **In the United Kingdom.**—In the United Kingdom, till 1918, the laws governing suffrage were exceedingly complex. So complex were they that no one, save those whose special duty it was, pretended to know their details. In 1918 the system was simplified by the passing of the Representation of the People Act, which introduced an approximation to universal manhood suffrage. This measure, however, allowed only a limited system of female suffrage. In 1928 the franchise was again altered, by the Representation of the People (Equal Franchise) Act. Under this Act, which assimilated the franchise for men and women for both parliamentary and local Government elections, any person is entitled to be registered as a parliamentary elector who is twenty-one years of age and is not subject to any legal incapacity. Persons must have resided or occupied business premises of

an annual value of not less than ten pounds in the same parliamentary borough or county, or one contiguous thereto, for three months before they may be registered as electors. Every elector must be registered. No elector may vote in more than two constituencies, and the second vote must rest on a different qualification from the first one. Certain classes are excluded from the franchise, e.g., peers, minors. aliens, bankrupts and lunatics.

2. **France.**—In France, universal manhood suffrage exists, save for lunatics, convicts, etc., and men on active military or naval service.

3. **Germany.**—In the old German Empire, there was a near approach to manhood suffrage. The age limit was twenty-five, not, as in England and the United States, twenty-one. In the individual states of Germany there was no unity of system. The most notable of all the systems was the three-class Prussian system. One-third of the electors for the popular assembly (Landtag) was chosen from the three classes arranged according to the amount of taxation paid. In this way the rich classes had a much greater representation than the poor. According to the present German constitution all Germans, male and female, over twenty years of age have a vote.

4. **The United States.**—In the United States there are two grades of elections—one for the federal legislature and the other for the state legislatures. The House of Representatives, which is the federal lower house, is composed of members who are entitled to vote for the state legislatures according to the laws of the individual states. By various amendments to the constitution, disqualifications on the grounds of race, colour or sex have been removed, and, in theory, it may be said that the electorate is composed of citizens, male and female, of over 21 years of age. To this general statement, however, there are several qualifications, as there is considerable variation in the detailed rules of individual states. In some there is a property qualification : in others an educational test. Some states insist on definite naturalisation before an immigrant is allowed to vote ; some require residence for a minimum period, and in others only a declaration of an intention to become naturalised is necessary. By the nineteenth amendment to the constitution, carried in 1920,

women have the right to vote for both the federal and the state legislatures on the same terms as men.

5. **India.**—In India, the electoral system is very complex. Not only are there different qualifications for the Federation and the provinces, but the provincial qualifications differ from each other. Further, in some provinces there are two chambers, the electors for which have different sets of qualifications. The chief features common to the franchise of the Federation and provinces are these. An elector must be a British subject or the ruler or a subject of a federated State, or the ruler or a subject of any other Indian State, subject to prescribed conditions. No person can be an elector if he is of unsound mind or if he has been guilty of corrupt practices or other offences in connection with elections. Persons undergoing a sentence of transportation, penal servitude or imprisonment are also disqualified. The age limit is twenty-one years of age. There is no sex disqualification. Under the Government of India Act, 1919, the sex disqualification could be removed by legislation, but it was removed by the Government of India Act, 1935, save in some special cases. Residence is required in all cases.

The positive qualifications of electors are based on the following factors :—

(*a*) Community—including religion—for example, no Muhammadan may vote in a General (which is tantamount to a Hindu) constituency, no European can vote in a Muhammadan constituency, and no Anglo-Indian can vote in an Indian Christian constituency.

(*b*) Sex : for example, in certain Muhammadan women's constituencies only women can vote. In General women's constituencies both men and women may vote. Another aspect of this qualification is that wives and widows of voters under the previous constitution are made eligible for enrolment.

(*c*) Interests: In certain constituencies, such as commerce and industry, and labour constituencies only those can vote who have the prescribed qualifications, such qualifications being determined by the particular nature of the constituency. For example, in a chamber of commerce constituency only the qualified members of the chamber concerned can vote, and in labour constituencies only labourers or members of specified trade unions may be electors.

(*d*) Social class : In certain constituencies only those who are members of certain classes or castes may vote ; for example, in some provinces seats are reserved for representatives of backward areas and tribes. In most provinces seats are reserved for the Scheduled Castes, or, as they used to be known, the depressed classes.

(*e*) Property qualifications : In all provinces property qualifications of some type are prescribed. Examples of such property qualifications are assessment to income-tax and payment of municipal taxes, rural rates, cesses, or rent.

(*f*) Service : for example, a retired or discharged non-commissioned officer or soldier of His Majesty's forces and certain specified classes of pensioners are eligible to vote.

(*g*) Education : possession of a University degree, passing the matriculation examination or proof of literacy are examples of this type of qualification.

(*h*) Dignities : for example, the holding of any title, order or decoration conferred by His Majesty the King.

(*i*) Office : for example, the holding of a number of official and non-official offices, such as Vice-Chancellorship of a university, judgeship of a High Court, and chairmanship of a municipality.

2. ELECTORAL DISTRICTS

Subdivision of Areas.—In order to elect members of a legislature in a modern state it is necessary to subdivide the country into electoral areas. Theoretically there is no reason why all representatives should not be chosen from the country at large, but in practice it has been found difficult to manage large constituencies ; it is also difficult for electors to have sufficient knowledge of candidates to vote intelligently for them. Modern states, therefore, are usually subdivided into areas for electoral purposes. These areas are fixed as a rule according to numbers, but it may happen that district limits fixed for other purposes, such as local or municipal government, may be adopted. These areas should be as equal in population as possible. With modern industrial and commercial conditions population changes very quickly, and it is often found that where originally electoral districts were approximately equal in population, later, owing perhaps to the rise of a new industry in a hitherto agricultural area, or to the decay of an industry in a hitherto industrial area, the popu-

lation has changed. In almost every state there are examples of such discrepancies between the number of electors and number of representatives. For electoral areas, therefore, revision is necessary. This is called redistribution of seats, the system by which seats may be abolished in one area and added in another. In countries with a rapidly growing population periodical revision is very necessary. This revision may not only involve redistribution of seats but also an increase in the number of representatives.

The Census as Basis.—In most countries every ten years a census is taken, and the best way to determine distribution is to follow the census. In the United States, the basis of representation according to numbers shifts from census to census. Thus after the census of 1910 there was one representative to about every 210,400 inhabitants; now the ratio is one for 281,000. In Great Britain periodic redistribution Acts are passed by which the inequalities resulting from changes in the population are rectified as far as possible. At the last redistribution, in 1928, the seats in Great Britain were rearranged on the basis of one member of the House of Commons for every 70,000 of the population.

Methods of Making Electoral Areas : Single District and General Ticket.—In the making of electoral districts there are two leading methods. One is to subdivide the total area into as many districts as there are representatives to be chosen, one member to be chosen from each. The other is to make a smaller number of areas from each of which several members are chosen, the number from each being proportionate to the size of the district as compared with the total number of members to be chosen. The first of these methods is known as the single district system, or, in French, the *scrutin d'arrondissement* (voting by arrondissement, or district). The other is the general ticket method, or in French, the *scrutin de liste* (list voting).

In actual practice most states favour the single district method, although in many both systems have been tried at various times. In Great Britain the single district plan is the general rule, but some larger constituencies return more than one member. In France the single district was adopted at first for the Chamber of Deputies, but in 1885 it was abolished for the general ticket method, which in 1889 was abolished in favour of the single district plan formerly in vogue. In

1919 the *scrutin de liste,* with proportional representation, was again adopted, to be replaced in 1927 by the *scrutin d'arrondissement.* Where proportional representation has been adopted, the general ticket method necessarily prevails. In municipal and local government elections there is the greatest variety. Often where the single district method is adopted for central government the general ticket method is adopted for local government, and *vice versâ.*

Advantages of the Single District.—There are several advantages in the single district plan. In addition to performing his duties as a legislator for the whole state, the member chosen also knows the particular needs of his district, and brings these before the central government. In all systems of government, however great may be the decentralisation, the sanction of the central government is necessary for many types of work. Thus in Great Britain the Ministry of Health possesses large powers of sanction, and district members may use their influence in securing the necessary orders. Not only so, but for local purposes sanction is sometimes necessary from Parliament itself. Bills of this type are usually non-contentious, but the local member may help in guiding them through the House of Commons.

Another advantage of the district method is that the member is known to his constituents: often the member is either a native of the area or has lived in the area for a considerable period. Another advantage is that it secures a reasonable balance of interests, especially where there is strong party organisation. Where the general ticket method prevails, the stronger party may secure all the seats, but in the single district, minorities have a chance of representation. Agricultural areas, for example, may secure representation, whereas in the general ticket plan it may happen that, in highly industrialised countries, the town interests will always outvote the rural interests. The district method thus secures variety in representation, and as such is a better method of representing the will of the people than the general ticket method. Another benefit of the single district plan is simplicity of administration and ease in counting votes.

Disadvantages of the District Method.—The disadvantages of the single district plan are, firstly, the fact that population changes rapidly and the basis of representation may become unjust. This can be remedied by frequent revision of areas.

This defect applies equally to the general ticket method. Secondly, it is often said that election by single districts leads to particularist views in politics. To secure votes members tend to look after local interests more than general interests. This is more an academic than a real argument, as local interests tend more and more to become matters for local bodies, and members of the central legislature are judged by the electors according to the opinions the members hold on matters of general policy. Members do look after local interests, but in modern governmental organisation, this, far from being a defect, is a positive advantage of the district plan. Thirdly, the single district plan, it is said, restricts the choice of the electors, with consequent loss of man-power in the legislature. Here, again, facts prove the argument fallacious. Most electoral areas may choose their candidates as they wish. Where, as in some municipal elections, the candidates must reside in their electoral areas or wards, a more general method of election may secure better men, but in central politics, electors, as in Britain, may choose any one they please. Often the member is a native of or resident in the electoral area, but in that case he is usually one of the most prominent inhabitants. But it more often happens that non-natives or non-residents are elected. In modern democracies, where every man and woman is educated, it is not easy for second-rate men or women to be elected. The normal civic sense of the people is strong enough to prevent inferior men from even contesting elections.

Conclusion.—The single district plan has proved a fairly satisfactory basis of election. That it has drawbacks is obvious, but all plans of representation have drawbacks. The single district method requires careful control and management, especially in respect to periodical revision, to preserve the balance of numbers. On the whole it is the most favoured electoral method for central government at the moment, though the general ticket plan, with proportional representation, is making rapid headway. In local government a combination of the single district and general ticket methods seems to be most satisfactory.

The Ballot.—In all democratic elections the principle of the ballot, or secret voting, has come to be recognised. The ballot, both in principle and procedure, may best be explained by the following extract from the English Ballot Act of 1872 :—

"In case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper, showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agent, if any, of the candidates as may be in attendance, open the ballot boxes and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate, to whom the majority of votes have been given."

3. METHODS OF VOTING AND PROBLEMS OF SUFFRAGE

Minority Representation.—In all systems of election, the candidate chosen is the one who receives the majority of the votes cast. But it is clear that if A.B.C. and X.Y.Z., two candidates for a legislative assembly who represent opposed political ideas, receive respectively 5,000 and 4,999 votes, the 4,999 voters will not be represented as they wish. A.B.C. is elected by a majority of one, but he cannot be said to represent all the voters in his constituency.

John Stuart Mill's Statement.—Many political thinkers hold that no true democracy can exist where mere majority election of this type prevails. Lecky and John Stuart Mill, in particular, are strong advocates of minority representation. Mill, in his *Representative Government*, devotes considerable attention to this aspect of the representative system. "A completely equal democracy," he says, "in a nation in which a single class composes the numerical majority, cannot be divested of certain evils; but those evils are greatly aggravated by the fact that the democracies which at present exist are not

equal, but systematically unequal in favour of the predominant class. Two very different ideas are usually confounded under the name democracy. The pure idea of democracy, according to its definition, is the government of the whole people by the whole people, equally represented. Democracy, as commonly conceived and hitherto practised, is the government of the whole people by a mere majority of the people, exclusively represented. The former is synonymous with the equality of all citizens ; but strangely confounded with it is a government of privilege, in favour of the numerical majority, who alone possess practically any voice in the state. This is the inevitable consequence of the manner in which the votes are now taken, to the complete disfranchisement of minorities," and, after saying that the majority will prevail in a representative body actually deliberating, he goes on to say : "But does it follow that the minority should have no representatives at all ? Because the majority ought to prevail over the minority, must the majority have all votes, the minority none ? Is it necessary that the minority should not even be heard ? Nothing but habit and old association can reconcile any reasonable being to the needless injustice. In a really equal democracy, every or any section would be represented, not disproportionately, but proportionately. A majority of the electors would always have a majority of the representatives ; but a minority of the electors would always have a minority of the representatives. Man for man they would be as fully represented as the majority. Unless they are, there is not equal government, but a government of inequality and privilege : one part of the people rules over the rest ; there is a part whose fair and equal share of influence in the representation is withheld from them, contrary to all just government, but, above all, contrary to the principle of democracy, which professes equality as its very root and foundation."

Methods of Minority Representation : Proportional Representation.—Many expedients have been suggested for the representation of minorities. In India, the problem has been solved by the simple expedient of reserving seats in the legislatures for the chief communities and interests ; but where no such reservation is made, other methods have been advocated. The chief of these is proportional representation. The aim of proportional representation is to give every division of opinion among electors corresponding representation in national

or local assemblies. A distinction is sometimes drawn between proportional representation and minority representation. The latter gives representation of some types to minorities, whereas proportional representation gives representation in proportion to voting strength.

The Hare System.—The scheme most commonly connected with proportional representation is called the Hare or Andræ system. This system was first proposed in 1851, by an Englishman named Thomas Hare, in a book called the *Election of Representatives*. It was strongly supported by John Stuart Mill (in his *Representative Government*), by Lord Avebury, Lecky, and Lord Courtney. It was introduced into Denmark in 1855 by Andræ.

There are many variations of the Hare system, but they all have the same underlying principle. The scheme is also known as the preferential system, or transferable vote system. The basis of it is that each electoral district or constituency shall have a minimum of three seats. No maximum is necessary. Lord Courtney suggested a fifteen-membered constituency as a reasonable limit. The candidates stand on the "general ticket." The elector may vote for only one candidate, or for a limited number, and on the ballot paper he may write also 1, 2, 3, or more, indicating his first choice, second choice, and so on. To secure election the candidate need only have a certain number of votes. The number is fixed by dividing the total number of votes cast by the number of seats vacant. This number (known as the "quota") secures election as soon as a candidate reaches it. At the first count of votes, only first choices are taken into account. As soon as a candidate receives a sufficient number of first choices to give him the "quota" necessary for election, he receives no more votes. The surplus votes which otherwise would have gone to him are given to the second choices. If these second choices do not bring up the necessary number of candidates to the electoral quota, then the third choices are counted, and so on till all the seats are filled.

Proportional representation has made rapid progress in recent years in both central and local government. It has also been used in some provinces or "states" or federal unions, though not adopted for the federal unions themselves, except in special cases, as in the indirect elections to the federal houses in India, where the constituencies are small.

The List System.—In some countries, e.g. Finland, a special type of proportional representation is in force, known as the list system, by which candidates are grouped in lists, and all votes given to individual candidates on the list are counted first as votes for the list itself. Each voter may cast as many votes as there are seats vacant, but he cannot give more than one vote for one candidate. The number of votes necessary for election is, as in the Hare system, decided by the total number of votes cast by each party and is then divided by the electoral quota, which gives the number of seats to which each party is entitled. If there is any deficiency, it is made up by the parties which have the largest fractional quotas.

Arguments for and against Proportional Representation.—In spite of the evident reasonableness of the principle of proportional representation it has not found universal favour. It was proposed in the draft of the South African constitution, but ultimately given up. It was proposed and rejected in England in 1918. The chief difficulty of proportional representation is its complexity. Where constituencies have a large number of seats, the minds of electors may become confused. Thus in Belgium the largest constituency has twenty-two members, and electors find it difficult to sort out their various choices. The process of counting is also very difficult. The practical difficulties of the scheme have hitherto prevented its wide adoption. Recently proportional representation has been strongly supported as a means of countering the claims of small minorities, such as trade-unions, to control government. By proportional representation such minorities would be placed in their proper perspective in the voting strength of the country. At present they claim to represent the whole of one class of men and women ; whereas actually they may represent only a minority of that class. Over a whole country it would make the result of elections correspond more closely with the actual public opinion of the time.

Some writers point out that minority representation of this kind tends to produce a type of "minority thinking" resulting in class prejudice and class legislation. Not only so, but it is argued that, by such schemes, the ablest men in the country are excluded by those who pander to a particular class. Supporters of the Hare scheme argue that it makes more room for able men, insomuch as, though party sup-

porters give their first choice vote to their own candidate, they give their second choice to the best men of other parties.

The chief argument against minority representation in general is that by dividing up political opinion it encourages sectarianism in politics at the expense of the general welfare. Ultimately minorities have only one right—the right to convert themselves into majorities. If their opinions are acceptable to others, they may be able to convert these opinions into actual law. If, however, minorities were represented there would be no end to subdivisions in society. Further, sometimes an opinion is unfitted for the times in which it is voiced but may be adopted under other conditions. It might also happen that any set of what is known as "cranks", people who hold very peculiar opinions, might demand representation. Government by discussion depends on the power to convince.

The Limited Vote System.—Other methods of voting have found favour for the representation of minorities. The limited vote system provides a method of securing minority, but not proportional representation. The limited vote system requires a constituency of at least three members. The voter in the district is allowed a smaller number of votes than there are seats, and he may not give more than one vote to any candidate. If there are five seats the voter may be allowed only three votes, the minority thus having a reasonable chance of getting two seats. In practice representation is secured only for fairly large minorities, and that is unsuitable for a party system where there are three or more parties. This method has been used at various times by Great Britain, Italy and Japan for elections to lower houses, but it no longer prevails. It is still in vogue in some countries, but it is not generally used as a prevailing method for parliamentary election. It is used for special purposes, e.g. in Brazil, for constituencies with three to five seats, in both local and national elections.

Substitute Voting : Proxy Voting.—Other methods that may be mentioned are, substitute voting, by which candidates may cast surplus votes, that is, votes over and above what is necessary for election (the electoral quota), and insufficient votes, those under the general quota, and thus fill up the places not filled by the voting of the electors ; and proxy voting, by which a representative may cast as many votes as he receives multiples of the electoral quota.

Cumulative Vote System.—The cumulative vote system allows each elector to have as many votes as there are seats vacant, and to cast his votes as he wishes. Thus if there are five representatives, he may give all his five votes to one member, or four to one and one to another, and so on. This system, known popularly also as "plumping", when all votes are given to one candidate, is successful in giving representation to small minorities. These minorities must be well organised in order to ensure the election of their candidate. The cumulative system does not secure proportional representation, and it is wasteful insomuch as candidates for minorities often receive far more votes than are necessary to elect them. The system is in vogue chiefly in local areas, when different interests require representation. Thus in the old School Board system in Scotland, it enabled small communities representing the Roman Catholic and Scottish Episcopal church interests to secure representation, and it frequently happened that the candidates for these minorities, though the minorities were very small, were returned at the top of the list. In this way the system engendered sectarian ill-feeling and strife. The cumulative system is in vogue in Bengal, in the General constituencies in which seats are reserved for the Scheduled Castes.

The Second Ballot.—Another plan for securing a just electoral system is the second ballot. Where there is one seat and only two candidates, the simple majority system is sufficient, but where there are more than two candidates it may happen that the candidate elected may secure only a relative majority, not an absolute majority. Thus in a three-cornered election A may receive 5,000 votes, B, the second candidate, 4,000, and C, the third candidate, 3,000. A has secured a majority over B and C, but B and C between them have 2,000 more votes than A. The second ballot makes a new vote necessary between A and B, C dropping out of the contest. Those who voted for C may then redistribute their votes, and if they all voted for B, then B, not A, would be elected at the second poll.

The second ballot (there might be a third or further ballot where there were many seats) secures a more just reflection of the opinion of the electorate where three or more candidates seek election. In pre-war British elections it often happened that Liberal, Labour and Conservative

candidates contested a single seat, and the Conservative candidate succeeded because the general or progressive vote was split between the Liberal and Labour candidates. The second ballot, of course, does not secure proportional representation.

Representation of Interests.—In many countries there are arrangements which allow for the representation of special classes or interests. The most notable modern example in the west is pre-war Prussia, in which electors were divided into three classes according to the amount of taxes paid. To each class was given a third of the seats in the legislature, so that the richest class, which had fewest members, had the same representation as the poorest class, which was most numerous. The class system prevails in the composition of upper houses, such as the British House of Lords. The British system is the historical descendant of what used to be universal representation by classes. In the early stages of representative government in the mediaeval and early modern world there used to be three classes or "estates," each of which had its own representatives. The French parliamentary organ was known as the States-General, and the origin of both the British Houses (Lords and Commons) is, both in name and fact, due to class representation. The old classes were the nobility, clergy and commons, and the House of Lords is really the descendant of the greater nobles and clergy, and the House of Commons of the lesser nobles and common people.

Representation of interests prevails in India. Both in the federation and the provinces, seats are reserved for several interests, such as commerce, industry, mining, planting, landholding and labour. In the provinces seats are reserved for universities. While women may vote in and stand as candidates for other constituencies, special seats are reserved for women representatives.

Class representation, as a general principle, is objectionable; but, in a very complex system of society, as in India, it is almost inevitable. The chief objection to representation by interests is that, in practice, it is very difficult to draw the line between interests which deserve special representation and those which do not. Further, if carried too far, representation by interests tends to make the legislature an assembly of representatives seeking the interests of their own constituents only, and not the common welfare. The primary con-

cern of the representatives may tend to be sectional, or selfish. In Fascist Italy, where election is made by the many corporations, or federations, into which the people are divided, unity is secured by means of the party system, but where there is not a strong party system, an assembly with too many representatives of separate interests may tend to become more a collection of units than a unity.

Plural Voting.—By means of plural voting certain individuals receive more than one vote. Thus men with sufficient property in more than one electoral area—if property is a qualification—may vote in each area in which they are qualified. This is possible only where the areas are sufficiently near each other to allow the candidate to go from one place to another in time to vote. Sometimes the qualification for plural voting exists but is neutralised by elections being held on one day, thus preventing one man from recording votes in widely scattered constituencies.

The Weighted Vote.—Another form of plural voting is what is known as the "weighted" vote, which was strongly supported by John Stuart Mill. Weighted voting means that the persons who have greater interests at stake or persons better qualified to vote receive more votes than those less qualified or who have smaller interests in the country. One type of this is the university vote, by which a university graduate receives a vote as a university graduate in addition to a vote on other grounds. It may be argued that rich men have more interest in elections than poor or that the more educated are better fitted to voice their opinions than the less educated. Against this are the arguments that the poor have more need of protection, and that the educated classes are as much ruled by self-interest as the uneducated.

Difficulty of "Weighing" Votes.—The chief difficulty in weighted voting is the absence of any standard of judgment. Thus, while a university graduate may receive a special vote, the civil engineer or architect, who is as highly qualified in his particular branch of work, may justly complain that he has no extra vote. It is absolutely impossible for any man, however wise, to "weigh" the claims of either financial or intellectual interests. Everyone, for example, who was left out of the educational added vote, would justly resent the omission if he were an efficient man at his own work. In countries where everyone can read and write, it is impossible

to say that a graduate school teacher deserves two votes and an efficient coal miner only one. Not only so, but against the statement that an employer should receive more votes than an employee, it may be said that the employee may be more interested in political matters and have a better understanding of them than his employer. A "weighted" system would give satisfaction to few.

An actual example of plural and "weighted" voting exists in Belgium. Every male citizen of twenty-five years of age and above is allowed one vote. An additional vote is allowed to certain landowners and to men of thirty-five years of age and over if they pay five francs in taxes and have legitimate children. Two additional votes are allowed to male citizens of twenty-five years of age and over who receive certain educational certificates, or who hold certain offices. No one has more than three votes.

Compulsory Voting.—It is sometimes held that each citizen qualified to vote should be compelled to vote. In Spain and Belgium there is actually a legal obligation on citizens to vote; certain punishments follow failure to do so. Few governments, however, compel electors to vote. If an elector does not vote, it may be taken for granted that the country is better without his vote. If he did vote he might vote wrongly, or vote for a candidate because of a bribe. It is the moral duty of every citizen to interest himself in affairs of government, but to compel voting by law would be to take away the stimulus rising from the public good. Compulsory voting, however, teaches the citizen his duty, and what is compulsory in one generation may become moral duty in the next.

Female Suffrage.—The question of female suffrage has solved itself. Half a century ago, John Stuart Mill's book on *The Subjection of Women* was considered far beyond its times, yet Mill himself prophesied that before a generation had passed the political disabilities of women would be removed. Though not literally correct as to time, he was correct in principle. One by one the democracies of the modern world have admitted women to the vote, the last notable example being Great Britain, in 1918 and 1928.

Arguments For and Against.—The question of female suffrage, like all innovations, has been hotly debated. In favour of women's suffrage it is held that sex is no criterion for giving the vote. Where women are educated in the same

way as men, where they have proved intellectually fit for the exercise of the vote, it is ridiculous to refuse it. History shows us examples of great queens, authoresses and social workers; why should women such as these be debarred from the vote when relatively ignorant male labourers are given the privilege? Women need protection against unjust legislation. Up to now laws have been made for men by men, and women have been subjected to many civil disabilities. To remove those disabilities women must be represented.

Women have proved their value in public life in local bodies—for women, illogically enough, in many states have been allowed votes in local government but not in central government. In Australia, and other countries, where women vote on equal terms with men, they have not exercised any sinister influence. It might be proved that the advent of women into politics has helped to purify public life.

The usual argument against woman's suffrage is that political life is not woman's proper sphere, and to entice her from her home is to endanger her proper functions as a woman. It is argued too that women cannot serve in the army, and that the suffrage depends really on the ability to serve as soldiers. It is also argued that to allow women to interest themselves in politics may bring discord into the home. It is also said that women do not deserve the vote because the majority of them do not want it.

All these arguments are somewhat puerile. Experience has proved that women can both vote and fulfil their functions in the home. The Great War has proved that women, as nurses and workers in all kinds of employment, are as necessary as soldiers in war, and in Russia there were even female battalions. That the granting of the vote to women will bring discord to the home is as true of the man as of the woman, and that women do not interest themselves in politics is untrue, and even if it were true it was equally true of many men enfranchised by the Reform Acts in England. In advanced democratic countries, moreover, women are recognised as legal persons with similar rights to men. In the west only in comparatively recent years have the many mediaeval legal disabilities been removed in the case of women, and with their increasing legal status there follows a natural demand for a recognised civil status. For many years in western countries women were regarded as unfitted not only

for civil rights, but also for education; but the spread of universal and compulsory education to both men and women has completely altered the previous notions on female suffrage. For many years now women have proved their capacity not only for exercising minor civil privileges, but for holding high and responsible offices; and the proof of this capacity has broken down the old prejudice against granting them the right to vote.

Representation an Approximate Instrument.—The various devices which have been proposed for voting all go to show that a representative system of government can only approximately represent the will of the people. No scheme of election can be perfectly satisfactory. Direct democracy allows every opinion to be heard, but even in direct democracies the laws must be made by majority votes. No satisfactory method can be devised to give a due position to every phase of political opinion. But it is questionable if every type of opinion deserves representation. Many individuals hold theories which, if applied, they consider would be the salvation of society, but however good these opinions may be when judged by absolute knowledge, they may fail completely to appeal to the common consciousness of the time. There will always be unheard minorities. If they wish to be heard they must convince others. If a man with a new message is able to convince others, then in time his opinion will be regarded as better than other opinions.

The electorate increases with importance as democracy advances. So important is it, that it is sometimes looked on as a special branch of government. In modern legislation the electorate is the continuous "power behind the throne." Though it does not actually legislate, it ultimately controls legislation. For the success of democracy it is essential that the electorate should be highly educated, and in modern democracies we find that education always ranks very highly in political programmes. Only by education (in its widest sense) can the people attain the necessary enlightenment, mental and moral, which guarantees democracy against its terrible enemies, ignorance and passion.

4. INDIRECT ELECTION

Electoral Colleges.—In direct elections the electors choose their representatives by actually voting for them, whereas in

indirect elections the electors choose an intermediary body which chooses the representatives. This body is usually known as an electoral college. In some cases, the electoral college is specially constituted for the one purpose of electing the representatives, while in other cases the function of electing may be given to an elected council or assembly the main function of which is legislative. There are examples of both types in India. Of the former type, there are electoral colleges for filling the Anglo-Indian, European and Indian Christian seats on the Federal Assembly and Council of State. The same method is also prescribed for the women's seats. In these cases the electoral colleges are composed of representatives in the provincial legislatures for the one purpose of electing representatives to the federal legislature. In the case of the Bengal Railway Labour trade union seat, an electoral college chosen from the members of the approved railway trade unions is elected to choose the representative on the provincial Assembly. Of the second type, legislative bodies on which an electoral function is conferred, there are two outstanding examples. The Federal Assembly is elected by the provincial Assemblies, and in provinces which have a second chamber, the upper house, or Legislative Council, is partly elected from the lower house, or Legislative Assembly. In both these instances the elections are conducted by means of the single transferable vote.

European Examples.—The indirect system is often used for the constitution of second chambers, particularly where the territory concerned is large. In Soviet Russia, the Council of Nationalities consists of deputies chosen by the Councils of the Unions and Autonomous Republics and by the Soviets of certain other regions, called the Autonomous Regions. In France the upper chamber, the Senate, is elected by a college consisting of delegates chosen by the municipal councils and the departments ; and in Fascist Italy, the corporations, or confederations, choose the members of the Chamber of Deputies.

The System of Primary Groups.—The electoral college is not the only method of indirect election. An attempt has been made in some countries, e.g. Egypt, Turkey and Iraq, to secure adult suffrage by means of indirect election by primary groups of 20, 50, or 100 electing secondary electors, who compose the constituencies for returning representatives

to the legislature. All adults in the primary groups vote, but the electoral rolls of the constituency are composed of the secondary electors only. It is claimed that this system has several advantages, especially in countries with a large illiterate population. One benefit is that it gives every adult the chance to vote. The citizen is asked to vote only for someone he knows and can trust to look after his interests. He is not required to trouble himself with complex problems of politics. Also, it is said to be easy to administer. It is worked by villages, and each village keeps its own register of voters. Probably, also, the system secures a more intelligent class of persons to choose the members of the legislature.

Views of the Indian Franchise Committee.—The Indian Franchise Committee considered but rejected this system for several reasons. First, its adoption in India would have meant the abolition of the direct system, already in operation under the old constitution, and there is always objection to a direct franchise being taken away. In the second place, the Committee thought that the indirect system would lead to undesirable results ; in their own words, " Either the primary election would be a non-political election, in the sense that the group electors would simply choose a representative man or woman to exercise the responsibility of voting on their behalf—in which case it would provide very little political education for the people. Or it would become a political election, in which case the candidates and the parties would endeavour to secure the return of secondary electors pledged to themselves. The indirect system would then become tantamount to adult suffrage, with the expense and burden of a double election added thereto." In the third place, the primary elector would have no means of judging whether the secondary elector had carried out his wishes or not. The secondary elector would vote by ballot, and could not be called to account for his actions. In the fourth place, the indirect system, in the Committee's words, " leads itself to manipulation and jerrymandering. The party in power, or local authorities, can manipulate the elections so as to secure the return of their own friends as secondary electors. Local magnates and other forces can bring strong pressure to bear at the primary stage when voting is public or informal. The fact that the number of secondary electors is small makes corruption at the election

of members to the legislature far easier than under a system of direct election with a large electorate."

Election by Local Bodies.—During the period of the Morley-Minto Reforms in India, 1910-20, another type of election was in vogue, similar to that for the French Senate. The legislature was elected by local bodies—municipalities and district boards. This type of election was experimental; it really represented a stage towards a wider franchise. Election by local bodies, while being easy to administer and providing a well informed and experienced class of electors, suffers from the fatal defect that it is undemocratic. It neither gives the people as a whole a chance to voice their opinion in political matters, nor does it serve an educative purpose, save in a very limited sense. In practice, it lends itself to intrigue, and by introducing political matters into local bodies, it lessens the effectiveness of local government.

Criticism.–In theory, indirect election may be supported on the ground that it acts as a check on popular passion. It introduces an element of delay in elections, and acts as a sort of sieve through which election fever passes. Also, it secures an abler, more experienced body of electors. It serves, in a measure, the same purposes as a second chamber. Actually, indirect election, save for upper houses, rarely gives satisfaction. It does not give the citizen a direct interest in political affairs; it makes him apathetic. When he votes directly for his representative, he feels he counts for something. Canvassers or candidates flatter him and make him feel important. They encourage him to take an interest in public affairs. Sometimes they may incite him to passion, but by means of party organisations he soon learns that passion can be double-edged. If he votes only for a nominee, or secondary elector, he does not know how the nominee may act. He has no check on him, and gradually he loses interest in political affairs, or gives up voting in disgust.

Indirect Election for Upper Houses.—The indirect system is very useful in the case of upper houses. Democracy requires the direct system for lower or "popular" houses; but other factors count in the case of upper houses. One of these is ease of administration. Another is the avoidance of too many elections. This is particularly the case in federal countries, especially where there are two chambers in the province. If election were direct, then it might happen that

a voter would be called to vote for four houses at or about the same time—the lower and upper provincial houses and the lower and upper federal houses. Such a system, superimposed on direct voting for local bodies, would soon produce a surfeit of elections ; and a surfeit might in time render the elector as apathetic as if there were no elections.

In India.—In India, indirect election has been prescribed for the lower federal house, and direct election for the upper house. This has been done mainly for administrative purposes. The area and population of India are so large that a directly elected federal lower house would lead to impossibly large constituencies, unless the house itself had been made impossibly large. The burden of direct elections in the provinces is so great, also, that the conduct of direct elections for the federation would have imposed an unduly heavy task on the administration. The Council of State—the upper house—is smaller, it is true, but the franchise is limited, and the electorates restricted. The task of the candidates therefore is not made too heavy.

5. LENGTH OF OFFICE AND INSTRUCTED REPRESENTATION

Changes in Opinion.—The purpose of representation is the expression of the will of the people. In order to secure this, it is necessary to provide means whereby changes in popular opinion may be represented in legislature. Were representatives elected for life, it might easily happen that they were representatives only in name. The term of representation therefore must be definite. The term varies from country to country, and also in the same country according to the type of body elected. In Great Britain, for example, the maximum statutory length of tenure for the House of Commons is five years, but in local elections three years is a common term. Four or five years are the most favoured terms in modern legislatures. In second chambers tenure is usually longer. In the House of Lords tenure is hereditary and for life ; but in elected second chambers tenure is usually longer than in popular assemblies.

Annual Elections.—Annual elections, it is sometimes held, are necessary for a real test of popular feeling. The objections to annual elections, however, are overwhelming. In the first place, there is no real necessity for them. Popular opinion changes quickly, it is true, but not so quickly as to justify

the dissolution of the legislature every year. Normally the legislative process extends over a considerable period, and there is ample time for the legislature to consider the opinions of the people as expressed on the platform, in the press, in memorials, and such like. Annual elections, moreover, would seriously interfere with the work of legislation. In the short space of a year few important measures could be passed, and to elect new legislatures every year would lead to unwillingness on the part of a legislature to start measures which it might not be able to pass finally or which it might have to submit to the succeeding body. The loss of energy and time would be enormous. Apart from these objections, there is the most serious drawback of all, namely, the repeated excitement of the people caused by elections. In modern democracies, with party government, elections mean much agitation throughout the country. An equally strong objection may be advanced from the opposite point of view, that frequent elections might tend to make the people disinterested. The agitation caused by canvassers, party agents, etc., might so disgust the masses by its frequency, that elections might pass into the hands of cliques and factions. In some form the electoral agitation would disturb the country and lead to evil. Moreover, representatives of the best type would not submit to the ever-recurring strain and excitement—and expense—caused by annual elections.

Annual elections, therefore, are essentially bad. They lead to dislocation of public business, unhealthy party agitation and excitement, and cause an undue strain on the representatives. Nor do representatives change their opinions so suddenly as to demand the censorship of the voters every year.

Instructed Representation.—Another theory is that electors should have mandates from their constituents. This is sometimes known as "instructed representation.' Representatives, it is said, should receive instructions from their constituents, and if they do not obey these instructions, the representatives should be recalled. The idea behind this is that the very meaning of representation is that the elected representative should record the will of his constituents, not his own will. He is in a sense a servant, and must do what he is told.

Objections to Instructed Representation.—Few responsible writers support this view. It will be remembered that

Austin, the English law-writer, looked on the representatives as "trustees" of the people. The meaning of this is that the representative normally does voice the feeling of the majority of his constituents, but if he does not, the only remedy his constituents have is to eject him at the next election. They cannot take legal steps against him for changing his opinions or breaking his "trust." The objections to instructed election are manifold and strong. In the first place, the system of election and re-election, with a reasonable maximum term for the life of the legislature, is sufficient guarantee that representatives will not to any dangerous extent misrepresent the feeling of their constituencies. With modern party government, the opinions of both electors and elected are to a great extent made for them by party leaders. If a sitting member changes his party, he may continue to sit till the next election or he may submit to re-election if his conscience urges him so to do. Changes of party in this way are very infrequent, and if they are frequent the likelihood is that the party in power (if the change is *from* it) will be beaten, and the legislature dissolved in order to appeal to the electors.

Secondly, representatives for central legislatures are not elected for local but for general interests. Local matters are dealt with by local bodies, of which, as a rule, the life is shorter than those of central legislatures. Central legislatures exist for the whole, not for the parts, and instructed representation would result largely in the representation of local interests.

Thirdly, able men could hardly be expected to serve in legislatures where they could only say what pleased their constituents. Every representative to a certain extent must consider the will of his constituents, especially if he desires re-election, but to bind him absolutely would be to deprive a nation of the best mind force in it. The very essence of representative government is government by the people for the people, but the representative system is quite sufficient for this without instruction.

Fourthly, were instruction necessary, it is not clear how instruction could be provided. How could a constituency be so organised, and how could the interest of the people be so kept alive, that real instruction could be given on every proposed law? The instruction would be mere repetition of party formulæ or the opinions of local factions who took

the trouble to record an opinion. The average elector is not interested in every law that is proposed, and on many laws the average elector is incompetent to give an opinion. In local organisations for instructing representatives, the opinions of the few experts in a constituency on a special or technical law might easily be drowned by the voice of factions.

Fifthly, it may be argued that, as the representative is usually an abler man than the electors, it is as much his duty to give instruction as to receive it. In election campaigns the best efforts of candidates are put forward to persuade electors. No body of electors is so unreasonable as to expect a representative to be a mere cork on the ocean of popular opinion. A representative is respected by his constituents not for his supineness but for strength, and if his ability is shown by disagreement with the electors on certain points, the electors regard it not as weakness but as strength.

Sixthly, it is difficult to see how the work of legislation could proceed at all if every representative had first to receive instructions. It would take a long time to secure the opinion of a constituency and the necessity for a particular measure might have passed before the representatives could vote. Instructed representation is thus not only unnecessary but bad. There is, however, one case in which instruction may be reasonable. This is in a federal government, where, as in the old German Bundesrath, the representatives were representatives of individual states and had to vote according to the instructions of their own governments. The representative in such a case is really a kind of ambassador. Such instruction, however, though more defensible than instruction in ordinary legislatures, is by no means good. It preserves provincial or "state" differences at the expense of the unity of the state. In other federal unions the representatives of state are also representatives of the common interests, and thus help to complete national unity. In a federal system of government there is a continual tug-of-war between central and state governments, and it is better to place the common welfare in the first place, and not to keep separatism alive by needless separatist organisations.

6. THE QUALIFICATIONS OF REPRESENTATIVES

Normally, an elected representative to a legislative body must himself be an elector. His name must be included in

the electoral roll of a constituency. As a rule it is not necessary for his name to be in the roll of the constituency for which he stands, although, in India, where special interests are represented, the candidate's name must be included in a roll of the same class of constituency. Inclusion of the candidate's name in an electoral roll *ipso facto* renders him subject to the qualifications and disqualifications of electors, for example, he must be a citizen, and must not be a criminal, idiot, lunatic or bankrupt.

Most states specifically provide for positive disqualifications of candidates or representatives. These differ from country to country, but the following are the most usual :—

1. **Citizenship.**—Only those who are citizens of a state either by birth or loyalty can be elected to legislatures. Clearly aliens, whose sympathies belong to another state, should not become law-makers in a state. Were an alien to seek election in a legislature, his aim would either be personal in order to push his own interests, or to secure favourable legislation for his financial interests, or political, in order to secure legislation favourable to his own country, and in all probability, against the interests of the country in the legislature of which he served.

2. **Age.**—Legislation being vital for the interests of the people, it is necessary that only mature or relatively mature people be chosen as representatives. Twenty-one or twenty-five are common age limits in the west. For second chambers often a higher age limit is necessary. Belgium, France and Italy require forty as the minimum for the second chamber. In India, thirty is the minimum for upper houses and twenty-five for lower houses, both federal and provincial.

3. **Property.**—In many states a property qualification is required. Where members are not paid, the property qualification though not necessary by statute becomes necessary in fact, as only men with leisure can become members of the legislature. The property qualification is rapidly disappearing, though it still holds even in advanced democratic countries. In Canada membership of the second chamber is reserved for those who have 4,000 dollars worth of property. In England Members of Parliament are now paid from public funds so that poor men may sit in the House of Commons. In India the property qualification of members arises from the requirement that they must be enrolled as electors in the same class

ment do between the legislative, executive and judicial functions. Every executive act involves the three aspects of law, execution and judgment, whether separate authorities are involved or not. But the syllogism analogy is useful in showing one important point, viz., that the so-called three powers do not stand to each other in the relation of equality. As the major premise is more important than the minor and conclusion, so the legislature is more important than the executive or judicial. Laws must exist before judgment can be given or the executive take action. The legislative is the more important—indeed the fundamental—function of government ; without it the executive and judicial cannot exist. Whether a Government be a stable or unstable one, whether or not laws are observed in their letter or spirit, every executive act involves primarily a legislative act. Save in cases where sheer unreason rules, every executive and judicial act logically involves legislation.

Legislative and Deliberative.—In our analysis of the three powers, we must therefore analyse the legislature first. The legislature is the law-making power. It includes two kinds of work which are sometimes looked on as separate "powers" —the purely law-making and the deliberative. It is really impossible to separate these two functions. The purely law-making may be taken to include the actual mechanism of making laws—drafting, etc.,—a not unimportant function. John Stuart Mill considered this function so important that in his scheme of government he recommended a special committee for it. But the mechanism of law-making is a duty for specialists in that particular work. The drafting, formulating, etc., of laws is not of the most vital importance. The content and end of the law are more important, and it is the deliberative function which has to determine them. The deliberative function does not belong to any particular branch of government : it is the thinking of a nation and that is done by various agencies, such as the pulpit, press and platform. In order that this thinking may become definitely formulated, it is necessary to have some central organisation to act as a focus for it. That organisation is the legislature, or, as the English call it, Parliament. Parliament comes from the French word *parlement*, which means originally a meeting for discussion. Parliament being, as it were, the epitome of the nation, expresses its centralised thought, and

that thought, when formulated in proper language and "passed," becomes the law of the state. Parliament thus performs the double function of deliberation and law-making, but in neither does it act by itself. The sum total of the thinking forces of the nation—as given in books, newspapers, speeches, advice by experts—moulds its deliberation. In the actual drafting of laws governments use the services of expert officials.

Organisation of the Legislature.—In modern states the organisation of a legislature or Parliament presents many problems. Even in the smallest state there exist a multitude of interests, each of which asks to be heard. In Greek city-states Parliament included all interests; but in modern nation-states only representatives can attend. All interests had an equal chance of being heard in the old city-states, but now we have only an approximation. Legislation affects everyone in the state, and laws necessarily must be made with much caution. The chief problem in the organisation of modern legislatures is to represent the will of the people, and, at the same time, prevent hasty legislation. Laws should, as Aristotle said, be "reason without passion," but men often give way to momentary impulses. Passion is dangerous in law-making. The experience of ages had led most modern legislatures to adopt means to avoid the dangers of hasty legislation. These, and other considerations have to be taken into account in organising the legislature. What actually happens will be seen when we examine the constitutions of individual states. At present we give a short account of the chief means adopted by modern legislatures to secure harmony and unity in the state.

Unicameral and Bicameral Organisation.—One of the most common characteristics of legislative bodies is that they are divided into two bodies or houses—the upper and lower. This is known as the bicameral system (*camera* is the Latin for "chamber"). The bicameral system used to be all but universal, but since the Great War several states have discarded their second chambers. It is significant that most of the unicameral states of the modern world are either new states set up as the result of the Treaty of Versailles or states in which there has been some sort of revolutionary upheaval. Bulgaria, Estonia, Latvia, Finland, Portugal and Turkey are examples of unicameral states. The unicameral system is not

uncommon in the "states" of a federal union. In India, only a few of the provinces have two chambers. In Canada, all the provincial legislatures bar that of Quebec, are single-chamber; in Australia, all the state legislatures are bicameral, save that of Queensland. All federations, from their nature, must be bicameral.

The Unicameral System.—The unicameral system has not been adopted by any modern state of first importance. Historically, it has been weighed in the balance and found wanting. The most conspicuous historical examples are the French single chamber system, set up by the National Assembly of 1791, and the single chamber House of Commons established during the time of the English Commonwealth, after the Great Rebellion. Neither the French nor the British experiment lasted. The unicameral system is usually the result of political instability; in its turn, it encourages hasty legislation, political strife, class struggles. The same conditions as lead to the creation of single chambers usually cause their downfall, unless, as is the case with some of the post-war creations, the legislature is under the domination of a dictator.

The Bicameral System.—The bicameral system is often said to be only a historical survival—as in the case of the senior of all second chambers, the British House of Lords. This, however, is not the case. The second chamber in most modern states is a relatively new creation; in fact, only in one or two cases are the chambers over one hundred years old. Several of the newest states—of the post European War period—have the bicameral system.

Reasons for the System. 1. To Prevent Hasty Legislation.—There are good constitutional reasons for having two chambers. The chief is the prevention of hasty legislation. It is one of the three methods for such prevention, the other two being a constitution and procedure. The electorate also is a preventative of hasty measures, but it also can be the chief compelling force behind them. Where a second chamber exists there is less likelihood of ill-considered measures becoming law, because they are more carefully considered. A single chamber, specially in the modern days of popular government, is liable to be carried away by momentary impulses or persuaded by the powerful rhetoric of one man; but where there is another house to consider a measure, a brake

is added to the wheel of legislation. Ill-considered legislation has thus less chance of passing. On the other hand, the fact that one chamber feels that its responsibility is not final may lead to less considered and balanced action than might be the case did final responsibility rest with it.

2. **For the Representation of Interests and Minorities.**—Another reason for the existence of second chambers is the representation of interests and minorities. In modern nations suffrage rests on a wide basis with the result that there is a constant tug-of-war of interests, of class against class, or trade against trade. In the days of autocracy there was no place for representation beyond the expression of opinion or giving advice to an autocrat by persons selected by him, as representing any particular interest. With the expansion of the suffrage the first or lower chambers have become more and more "popular," i.e., representative of the proletariat as distinct from the moneyed or upper classes. These "upper" classes must have their interests safeguarded, hence their claim to be represented in the second chamber. A second chamber is—and in fact should be—conservative in temperament. As we have seen, the ideal of political progress is "conservative innovation." The popular houses are always ready to innovate and the conservative elements should be supplied by the second chambers. From this point of view it may well be argued that the second chamber should be as free as possible from party bias. The actual facts of political life, however, show quite as strong party divisions in second as in first chambers. Special measures are often adopted to prevent such bias—special methods of election, special qualifications of representatives, special periods of tenure and special periods of election for part of the house, in order that the house itself may be permanent.

3. **For the Selection of Able Men.**—One of these points—special qualifications—suggests another of the main reasons for the existence of a second chamber, viz., the necessity of choosing specially able and experienced men for the work of legislation. Popularly elected houses are not only subject to waves of intemperance, but, especially where members are paid, the personnel may contain a proportion of persons ill-qualified to guide national policy. Reasoned action is more possible in a house which is not the subject of passing political whims. In actual practice, second chambers are so con-

stituted that the members are not made subject to the pressure of the electorate in the same measure as those of lower houses. Were second chambers merely reproductions of lower houses, there would be no rational justification for their existence.

4. **Representation of States in a Federal Government.**—There is still another reason, which is a result of modern development—the representation of individual states in a federal union, e.g., the United States of America. The Senate is composed on a state, not on a population basis.

Relations of First to Second Chambers, The Second Chamber a Revising Body.—No general principle can be enunciated for the regulation of the relations of first and second chambers. Usually, the first chamber initiates legislative measures, and the second chamber revises and criticises them. But that is by no means universal, as most second chambers can initiate legislation. But, generally speaking, the second chamber is a revising and criticising body; it is also a delaying agency. It permits of more time being given to the consideration of measures. The time factor is especially important in the case of lower houses hastily adopting popular measures, and also when lower houses flagrantly disregarded the interests of minorities.

Financial Legislation.—In one kind of legislation—budgetary or financial—lower houses as a rule have supreme control. In the United Kingdom, the House of Lords has now practically no power in financial legislation. In India, provincial upper houses may discuss the annual budgets, but they cannot vote on them. In the federation, however, the Council of State is given definite financial functions. Demands for grants are placed before both the Federal Assembly and the Council of State, and each house has the power to withhold assent. Special procedure, including joint sittings of the chambers, is prescribed to deal with cases of difference of opinion between the chambers.

Internal Organisation of Legislative Bodies.—Legislative bodies, as a rule, control their own internal organisation. Sometimes the constitution determines the main lines of organisation, as in the American Senate, where the Vice-President is the constitutional Chairman of the Senate. The permanent officials of legislative houses are, as a rule, controlled by the presiding authority (president, chairman, or speaker); they are appointed either by him or by the executive

government after consultation with him. On appointment they usually are treated as permanent civil servants.

Organisation of Houses.—In all legislative houses, there are well recognised methods of conducting business. Bills may be submitted either by the government, which, in the parliamentary system, means the cabinet, or by private members. Time is allotted for the discussion of official and private business, usually on separate days. Save in the case of very urgent bills, or bills of a routine or unimportant character, such as amending bills with only verbal changes, projects of legislation are referred to committees, usually known as select committees. In India, a bill is often circulated for the purpose of eliciting public opinion, before it goes to a select committee. The committee system is essential in modern legislatures. Large bodies cannot effectively discuss complicated proposals in detail. Such discussion is done in smaller bodies, which, as a rule are so appointed as to reflect the party composition of the house. In India the chief type of committee is the select committee. On the continent of Europe standing committees are appointed not only to deal with bills but also to supervise and control the work of the executive government.

Procedure.—The rules and procedure of legislative bodies vary from state to state. The rules are framed to secure adequate consideration of measures and to prevent confusion, and unreasonable delay. To ensure that bills are carefully considered, most legislatures require discussion at different stages. The best known method is the English system of three readings—first, second and third reading. The first reading is usually purely formal; a debate is held at the second stage, after which the proposal usually goes to a committee: this is known as the committee stage. Then comes the report of the committee to the chamber, or report stage, which is followed by the third reading, when the bill is finally passed, or rejected. The type of committee appointed to deal with bills varies from country to country. In Britain, the two chief types of committee are standing committees, of which there are a fixed number, chosen according to recognised rules, and select committees. Select committees meet for the one purpose of considering the bill referred to them, and cease to exist after their work is completed. In the British system, it is usual for the minister, or member in charge of a bill to

preside over a select committee. In continental countries a reporter "reports" the proceedings to the house. The "reading" procedure is characteristic of the British system; on the continent a bill is usually referred at once to a committee.

Rules provide for other matters such as the length of speeches, the "closure" or stoppage of a debate, the quorum or minimum number of persons who must be present to conduct business, the method of voting, the asking of questions or making interpellations, and the powers of the presiding officer.

Financial Procedure.—Financial legislation is subject to special procedure. All financial proposals must emanate from government; no private member can submit a finance bill. Financial proposals are not subject to the committee routine, unless the whole house resolves itself into committee, as in Great Britain, where the House of Commons resolves itself into two committees—one on supply, one on ways and means—to deal with financial matters, including the annual budget. These committees are composed of the whole House of Commons, but the rules of debate are simpler and discussion less formal.

8. MODERN METHODS OF DIRECT LEGISLATION

Modern Direct Democracy.—The theoretical and practical difficulties of the representative system have given strength to the idea that the people as a whole should be directly responsible for their own laws. As has already been indicated, representation is only an approximate instrument for expressing the will of the people. The representative system suffers from admitted weaknesses. It often does not give a voice to minorities; representatives sometimes lose touch with their constituents, and intrigue, corruption and self-interest sometimes have the effect of bringing into being laws which are in the interest of some classes of the people. The initiative and the referendum, or, as the French call it, the plebiscite, have accordingly been given support as more democratic methods of law-making.

The Initiative.—The initiative is the system by which a certain number of voters (the number being fixed by statute) may both petition and compel the legislature to introduce a certain type of law. In one kind of initiative, sometimes called the formulative initiative, voters may draft a bill and compel the legislature to consider it. After the legislature considers

and passes the bill, they must resubmit it to the popular vote.

The Referendum.—Literally the word "referendum" means "must be referred," and the full meaning is "must be referred to the people." In plain words the referendum is a popular vote on laws or legislative questions which have already been discussed by the representative body of the nation. The principle underlying any form of referendum is the democratic ideal of going behind the interpretation of popular will by delegates or representatives to the fountain of authority—the will of the people as expressed by a direct vote of the majority of citizens qualified to vote. The referendum may be (*a*) facultative or optional—that is, it may be brought into action on the petition of a certain number of voters; or (*b*) compulsory or obligatory, in which all laws, or all laws of a specified type, must be submitted to the popular vote.

The idea of the referendum is no new one. The people of Rome used to meet together and exercise their sovereign authority; the Greeks, the Macedonians and the ancient Franks held councils of the people. Rousseau declared that the happiest people were a company of peasants sitting under the shade of an oak tree "conducting the affairs of the nation with a degree of wisdom and equity that do honour to human nature." The idea of direct government by the people he also favoured. "Some will perhaps think that the idea of people assembling is a mere chimæra," he wrote, "but if it is so now, it was not so two thousand years ago, and I should be glad to know whether men have changed in their nature." The theories of popular rights, derived mainly from Rousseau, are largely responsible for the modern support for the referendum.

The Referendum in Switzerland.—The home of the referendum, Switzerland, the most democratic country in Europe, is a small state, organised as a federal union in which the individual states are known as cantons. The supreme legislative and executive authority is vested in a parliament of two houses, namely, the State Council and National Council. The upper house has 44 members, two for each canton; the National Council, chosen by direct election, has one member for every 22,000 inhabitants. A general election takes place every four years. Both chambers taken together form the Federal Assembly, which is the supreme power in the state.

The chief executive authority is the Federal Council (Bundesrath), consisting of seven members and elected for four years by the Federal Assembly. These members must devote their whole attention to their executive work. The executive body introduces all measures into the legislative councils and takes part in the proceedings. The President and Vice-President of the Council are the first magistrates. Both are elected by the Federal Assembly for one year and are not re-eligible for the same office till after one year's interval.

The unit of local government in Switzerland is the canton, in which there is full popular control. In the smaller cantons the people meet together as a whole and make laws for themselves (Landsgemeinden). In the larger cantons a legislative body is elected, but the initiative and referendum are also in force.

The practice of referring proposed laws to the people prevailed in the cantons before it was applied to the central government. It was applied in the cantons primarily to constitutional matters and afterwards to ordinary laws. The Swiss thus had a long tradition of popular local government behind them before the referendum became an instrument of national government.

In the federal government of Switzerland the referendum is compulsory for constitutional amendment ; it is facultative or optional, at the request of 30,000 citizens or the legislatures of eight cantons, for ordinary laws. For constitutional amendment the initiative may be used at the request of 50,000 citizens. No federal initiative exists for ordinary laws. In all the cantons the referendum is compulsory for constitutional changes. In all the cantons save one (Freiburg), and those with direct assemblies (Landsgemeinden) the referendum, either compulsory or facultative, exists ; the number of votes (in the case of the facultative) necessary for demanding a referendum depends on the population. In all save one canton the initiative may be used for constitutional amendment, and in all but three for ordinary legislation.

The actual cases in which the referendum has been used in Switzerland show the rather surprising result that the people are more inclined to reject than to pass laws. It has proved a conservative, not a radical or revolutionary measure : it is thus a type of veto on legislation. Whereas in many modern states the veto or partial veto lies with the

head of the executive, in the referendum the veto lies with the people.

In the United States.—The referendum has been adopted in several states in the United States for particular purposes. There is no national referendum in America ; it is applied only in state governments for particular purposes, or in local governments (as in municipalities). It is in use in several other countries for constitutional amendment.

Arguments for and against the Referendum.—The supporters of the initiative and referendum usually bring forward the following merits of such direct legislation : (1) that it makes the sovereignty of the people a reality, compelling reluctant legislatures to act in a certain way ; (2) that it destroys party and sectional legislation, the people as a whole being less likely to split up into parties when they are given individual proposals to consider; (3) that, in the case of local government it leads to harmony—all interests being taken into account ; (4) that it arouses public interest in legislation as distinct from politics, or general political interests ; and (5) one of the most powerful arguments in favour of a referendum, that it compels men carefully to think of the laws that govern them, for it saddles them with their share of national responsibility.

Against the referendum is the important objection that it submits laws to the most ignorant classes. Representatives are usually better educated men than the mass of electors, and as such are fitter to control legislation. Actual experience, moreover, shows that the percentage of votes in a referendum is small. The referendum does not create interest in legislation, but it opens the way to party influences because parties are better organised than electorates. It also encourages agitators. Again, if legislatures are compelled to obey electorates in every law, they may lose their standing and responsibility. Able men would prefer to be electors, not representatives, in such a system. Further, it is impossible so to draft laws on complicated subjects, such as the tariff, as to make them easily understood by the masses. It is claimed that the adoption of the referendum in Switzerland has resulted in a complete destruction of parliamentary government in the English sense of the word and has reduced the National Chamber of Switzerland to a mere collection of "registering ciphers."

Finally, the Swiss example is misleading. The cantonal councils are really responsible for legislation, and their laws are rarely amended by the people. The Swiss referendum is successful because of the traditions of the Swiss people. It is also conservative, whereas ordinarily advocates of the referendum support it as a measure of radical reform or even revolution.

CHAPTER XIV

THE EXECUTIVE AND JUDICIARY

A. THE EXECUTIVE

1. MEANING AND APPOINTMENT OF THE EXECUTIVE

Meanings of "Executive".—The executive is that branch of government which carries out or executes the will of the people as formulated in laws. In its widest sense the executive includes all officials engaged in carrying out the work of government except those who make or interpret laws, i.e., the legislative and the judicial. In this wide sense, the executive includes everyone from the highest official to the lowest menial, from the Governor-General to the policeman or village chowkidar. The word, however, is used in a narrower as well as in a wider sense. In the narrower sense it denotes the heads of the executive departments, for example, the President and the Cabinet in the United States, and, in England, the Prime Minister and his colleagues. Thus when we speak of the executive in Great Britain we may mean either the Prime Minister and the members of the Cabinet, or all the executive officials from the highest to the lowest. Sometimes the highest officials are called the executive proper, while the others, that is, those who carry out the details of a policy laid down by the head, are called the administration or the administrative officials.

Nominal and Real Executive.—A distinction must be made between nominal and real executives. In Great Britain and India—in fact, in all the British Empire—the executive work is carried out in the name of the Crown. The familiar

letters O.H.M.S. always indicate the head of the executive in the British system. The King, however, is the nominal head : the real head in Britain is the Cabinet.

Essential Qualities in Executive Work.—The most essential quality for an executive is unity. Every executive act involves a single act of will. Unity of purpose, secrecy, quickness of decision and of action are better secured by one than by many. For deliberation and legislation two heads are better than one ; for administration, one head is better than two. In a "plural" executive time is lost in argument and discussion. The members check and hinder each other, and, particularly in emergencies, such as war or civil commotion, this is dangerous. The executive should not be a body for discussion. Discussion should take place in the making of laws ; once the laws are made, it is the function of the executive to carry them out as quickly and efficiently as possible.

The Appointment of the Executive.—In existing governments there is no uniform method of appointing the executive ; but three general ways may be enumerated : (1) by hereditary succession ; (2) by election, which may be of three types : (*a*) directly by the people ; (*b*) indirectly by the people ; (*c*) by the legislature ; (3) by selection or nomination.

1. **Hereditary Executives.**—Hereditary executives exist in the older countries of the world. According to this system, office goes according to the law of primogeniture. The tenure is life-long. In newer countries the hereditary principle has invariably been replaced by either the elective or selective principle. Where the hereditary executive does exist, it has the merit of long historical traditions behind it, and the very length of its historical connection gives it a stability which elected executives frequently lack. The real stability of hereditary executives, however, does not depend upon their historical antecedents, but upon the extent to which they rest upon the will of the people. In modern democracies hereditary executives have nominal powers only ; the responsibility for their actions lies with their ministers. Their office is thus removed from party politics, and is not subject to changes in public opinion. Its permanence makes it a national institution ; it thus becomes a focus of loyalty and symbol of national unity and strength.

Another merit of the hereditary principle is that it gives

a certain amount of national and international prestige to the executive. There is something more dazzling and more impressive in the ceremonies surrounding royalty than there is in the simplicity surrounding an elected executive. In the case of the king of England this is particularly true, for the King is not only the executive head of Great Britain, but ultimately the supreme executive in the largest Empire the world has ever known.

The general argument against the hereditary principle in the executive is that heredity provides no criterion for the choice of an able executive. There are numerous historical examples of monarchs whose personal acts or policy brought ruin to themselves and their governments. James II in England, the French kings immediately preceding the French Revolution and the Tsar of Russia before and during the Great War are instances in which hereditary executives failed. In all these cases, it is to be noted that the hereditary executive was not responsible to the legislature. Where, as in Great Britain today, the executive is responsible to the legislature, the danger of revolution is at a minimum. The hereditary executive is nominal, not real. It combines in itself the merits of the hereditary principle with those of an elected or a selected executive, i.e., responsibility to the legislature or, ultimately, to the people.

2. **Elective Executives**: (a) **Direct Election.**—In several governments the executives are elected directly. For example, in Chile the president is elected by direct popular vote. History also gives examples of elective monarchies. There are elective executives of this type in the United States of America. The idea underlying popular election is that the executive should have the confidence of the people. An elected president or governor, it is assumed, must feel a certain amount of responsibility, even though when once elected he may have very full powers. Supporters of the principle of election hold that the exercise of the vote for the executive, just as for the legislature, creates an interest in public affairs on the part of the masses. No doubt the people do receive a certain amount of political education by electing the executive, but experience has proved the disadvantages of election to be far greater than its advantages. In the first place, the people, unless the area of choice is small, are not as a rule fit to judge the executive capabilities of a candidate. In the

second place, the elective system involves intrigue, corruption and ill-feeling, not only during the period of election, but at all times. As soon as one candidate is elected those who aspire to succeed him proceed to canvass the people. Party feeling is perpetuated, and at election times it often becomes very bitter ; it may lead even to foreign intrigue.

When election prevails for lower executive posts, the system leads to many abuses. The chief qualities required for administration—technical skill, personal character and business capacity—often become submerged in party strife, and unsuitable candidates are elected. Moreover, especially if the electoral area is small, administrative officers may be elected by interested factions, who after election, continue to exercise their influence. The chief example of this type of executive appointment is in the states of the United States of America, where a great deal of harm has been done by such elections.

(b) **Indirect Election.**—Indirect election is common. In the United States of America, the president is elected by an electoral college in which every state has as many representatives as it has in Congress. In the Argentine Republic, the procedure is similar. The aim of indirect election is to restrict the choice to persons who are better qualified to judge than are the masses, and to a certain extent this prevents the rancour and ill-feeling which accompany direct election. In theory there is little to be said against indirect election. But in practice the delegates or electors tend to become mere party puppets with no independence of judgment. The elections are indirect only in name. In the United States of America, for example, election for the presidentship is nominally indirect but really direct. In the early days of the presidential election the delegates acted independently, but now they vote as members of a party. The party system thus combines the principles of direct and of indirect election.

(c) **Election by the Legislature.**—Election by the legislature is a type of indirect election. The National Assembly, consisting of the two Houses of the Legislature sitting together at Versailles, elects the French President. The idea underlying this type of election is that the legislature is the best qualified body of electors.

In most modern democracies, election of all types, direct or indirect, tends to become a matter of party organisation.

Legislatures are divided into parties, and their elections are party elections. The chief point in favour of this system is that the executive so elected is of the same party as the majority in the legislature and will thus be able to work smoothly with it. Because of the theory of the separation of powers, the legislative and the executive functions in the United States were so sharply cut off from each other as to endanger the smooth working of government. The party system with its almost direct method of election of the president grew up to secure harmony, for in actual practice government is very difficult if the legislature and the executive do not agree. The same is true in Britain, and in other countries with cabinet governments, where the head of the real executive, the Prime Minister, although technically appointed by the King, is virtually elected by the party in power in the House of Commons, for he must be the recognised leader of that party.

3. **Selection or Nomination.**—Selection for, or nomination to executive posts is the best method of appointment. Selection, and nomination, both involve a process of sorting out of candidates with reference to the purpose for which they are to be chosen. Selection, initially by some special machinery, such as competitive examination, and subsequently on the basis of achievement and merit is the most suitable method of filling subordinate posts. For major executive posts, selection is made on the basis of the candidates' record in public life or as an official. Selection applies in the case of all the chief executive posts in the British Empire, such as governorships-general and governorships.

The chief virtue of the selective method is that appointments can be made *purposively*; the incumbents are chosen with reference to their personal qualities and records, having regard to the type of work they are to be called on to do. The chief weakness of the method is that it lends itself to the abuse of nepotism or favouritism. This, however, can be avoided by special methods, such as the use of the examination system, for administrative posts, selection on the advice of advisory committees, and public service commissions.

2. PLURAL AND SINGLE EXECUTIVES

The Meaning of Plural Executives.—A distinction is sometimes made between single and plural executive. In a single

executive, the final control belongs to one individual. In a plural executive the control lies with two individuals or with a council of several.

Examples and Working of Plural Executives.—There are many historical examples of plural executives. In Sparta there was double kingship ; in Rome there were two consuls. In France at the time of the Revolution, the Directory was a plural executive. Several of the revolutionary executives of France were plural. Plurality, it was reckoned, prevented tyranny. France had a long history of despotism, and not unnaturally the French people thought that the chief safeguard against despotism was the abolition of a single executive head. Experience has proved that where plural executives have succeeded, the cause of success has been either personal or due to the fact that the functions of government were so subdivided that each function had practically a single executive head. In other words, plural executives have succeeded where they have adopted the underlying principle of the single executive. In Switzerland, at the present time, there is a plural executive. The chief executive in Switzerland is a board of seven persons called the Federal Council. This board is elected for three years by the two legislative houses sitting together. One of the seven members is elected president, but his powers are only the powers of a chairman of a meeting. In practice, the members of the council divide their work into departments ; each member is in charge of a department. Thus the Swiss executive indirectly adopts the principle of the single executive. The existence of plural executives in Switzerland is due mainly to the history of the Swiss people. They have been used to this type of government for generations in both central and local government. Another noteworthy point in connection with the Swiss plural executives is the control of the executive by the legislature. In a responsible government, the executive is responsible to the legislature, not only because their duty is to carry out the laws passed by the legislature, but also because by questions and interpellations the legislature exercises a continual supervision over the executive. In the British system of responsible government, the executive is the cabinet, which is usually a fairly numerous body. The Cabinet is jointly responsible for the acts of ministers, but, in actual practice, each minister is responsible for the administration of his own department. The

Cabinet deals with questions of policy only ; it does not interfere in departmental administration. The departments are, in effect, under a single executive head.

Delegation of Powers.—The plural executive must not be confused with subdivision or delegation of powers. In modern government no man can carry out all the executive work by himself. Work must be divided. This division may be made in more than one way. Work may be subdivided amongst subordinate officials, with the ultimate responsibility resting on the man at the top. Or it may be *delegated* to subordinate officials. Final powers of decision may be given to subordinate officials according to their position and to the importance of a question. Where work is subdivided in such a way that ultimately every matter must be referred to the head, there is little distinction between this and a plural executive. In fact this method has often more evils than the plural executives, because of the enormous waste of time it involves. Delegation of powers is essential in modern governments, otherwise the machinery would break down. The limits of such delegation are usually determined by departmental orders, or general rules of executive business. Officers of different grades are given powers to dispose of particular types of business. The importance of the powers of disposal varies with the grade of the officer. Questions involving matters of policy are reserved for the orders of the head of the department, or of government as a whole.

Advisory Councils.—The plural executive is also to be distinguished from the system by which the chief executive officer has associated with him an advisory council or a board. This council or board, in many cases, is merely nominal, such as the Boards of Education and Agriculture, and the old Local Government Board (now Ministry of Health) in England. Sometimes the board has certain powers of control over the executive. In a sense, the cabinet system is a method of government by an advisory committee, because a minister may seek the advice of his colleagues, or of the Prime Minister. On the continent, standing committees, however, not only advise but control. The same is true of Senate in the United States, which has certain powers with respect to the making of treaties and the appointment of judges. Such bodies, however, are constitutional instruments. The combination of executive work and advice can best be done extra-

constitutionally, by executive action. Advisory committees should have no executive powers. The power of action should lie with the departmental head. No minister, and no official, however, can be expert in every branch of work. He has to seek the advice of those whose opinions are well informed and whose names carry influence and authority.

Royal Commission.–A type of advisory committee which has been popular both in Great Britain and India is the Royal Commission. A Royal Commission is appointed to deal with questions of major importance only. For problems of smaller importance, local committees, usually called committees of enquiry may be appointed. The purposes of both are the same, to advise the government with respect to a number of cognate problems. In the course of executive government, new problems are continuously arising and they may become so complex that a ministry may find it difficult to evolve a policy. The ministry may wish to elicit further information, or to have the experience of other countries, before taking action. In some cases, expert opinion, not available locally, may be deemed necessary. The ministry, being responsible to public opinion for its actions, may also consider it advisable to have authoritative advice in order to meet criticism. A Royal Commission is always so constituted that its report cannot be lightly disregarded. The chairman, from whose name the report is usually known (e.g. the *Simon* Report on constitutional reform, the *Whitley* Report on Indian labour) is always a man who has had an outstanding record of public work or of administrative experience, and his colleagues are specially chosen because of their fitness for the particular task in view. A Royal Commission usually is given a specific task to do ; its instructions are contained in "terms of reference;" included in the instrument of appointment, which issues from His Majesty the King.

Royal Commissions, and committees appointed for particular, or *ad hoc* purposes, dissolve when their tasks are completed. Permanent advisory committees, however, are attached to many administrative departments. Such committees, which may meet either at regular intervals or as occasion may demand, serve several purposes. They help the executive officer concerned to discharge his duty with efficiency and confidence. They also secure harmony of work-

ing between the administration and the public, for advisory committees help in interpreting the wishes and temper of the people. If composed on a territorial basis, they also keep the administration in touch with local conditions. Finally, they act as a sort of buffer between the minister and the legislature. The minister can quote and use the authority of the committee in order to meet hostile criticism.

3. THE TENURE AND ORGANISATION OF THE EXECUTIVE

Duration of Office.—The period for which the executive holds office varies from government to government. In hereditary executives, the tenure is for life. In the case of minors it is usual to appoint regents. In elected or nominated executives the term varies from one to seven years. In the majority of the states of the United States of America the term is one or two years. In the case of the President of the United States it is four years, the Swiss President one year, the President of Brazil four years, the President of France seven years. The tenure of cabinets depends on how long they can command the support of the majority in the lower house of the legislature. In the British Dominions, India, Burma and countries under the Colonial Office, the usual period of tenure for Governor-General and Governors is five years.

Short Tenure.—There is very little to be said for the short tenure of office that prevails in the state governments of the United States of America. In the first place, it is obvious that if a man holds office for only one year he cannot carry out any policy. In the second place, it frequently happens that those appointed to the post have little experience, and the space of one year is not sufficient to enable a governor to acquire experience. In the third place, frequent elections for a governor are a very disturbing element in public life. They lead to abuse and corruption. In the fourth place, the governor, if he wishes re-election, must pander to the people. This leads to lack of independence in action and timidity in policy. The only argument in favour of the short tenure is the security against abuse of power. This security can be achieved by other methods. If an executive head is to be at all efficient, he must have not only adequate powers, but also adequate time in which to make his influence

felt. No man can be effective with a one or two years' tenure of office.

Re-eligibility for Office.—The question of re-eligibility for office is very frequently debated, especially in America, where short tenure is common. In some constitutions re-election is forbidden. In other cases, though there is no constitutional limit to re-election, there is an unwritten rule; for example, no President of the United States may be re-elected more than once. Re-eligibility tends to make the executive head court popular favour, whereas the impossibility of re-election gives him strength and independence. In his first term of office the President of the United States cannot be unaffected by the consideration that he may seek re-election and that his re-election depends on the popular vote. In his second term he need have no such fear and may pursue as vigorous a policy as he cares. Re-eligibility, of course, secures the continuance of good men and good policy. It also secures the responsible behaviour of the occupant of the executive office. It may well happen that if the executive head cannot be re-elected he may look upon the tenure of his office as a period in which he may do the maximum for his own interests. Re-eligibility, of course, depends largely upon the length of the term of office. In France, where the President continues in office for seven years, the question of re-eligibility scarcely arises. Seven years' occupancy of the Presidency of France usually satisfies the occupant. Not only so, but the President must take into consideration the fact that the honour must pass to others.

Organisation of the Executive.—In the organisation of the executive in modern governments there are certain broad lines of similarity, though an examination of the departments or "portfolios" of cabinets will show that no two governments are exactly the same. The arrangement of the executive depends on several factors. The first, and most important, is the work to be done. The departments have to be arranged on the ground of practicability, or administrative convenience. Till relatively recently, the departments were few; they were confined to the fundamental functions of government, such as peace and order, finance, defence, foreign affairs, and justice. With increasing complexity in social life, and the assumption of more extensive powers of regulation and control, by government, as well as the development

of state ownership and management, more and more departments have been created. Many of these started as branches of the more essential departments, but have had to be split off on the ground of administrative convenience. The second factor is political expediency. Cabinets have to command the confidence of the legislature, hence they may have to arrange departments in such a way as to include leaders of groups or parties. This is specially the case in coalition governments, composed of more than one party, and of non-cabinet governments where, though there is no responsibility to the legislature, the executive government desires to have popular support. For this reason several modern governments have departments for propaganda. The political factor also determines the extent and type of what may be termed "social" departments, that is departments whose function is to conduct social services, such as unemployment or sickness insurance and old age pensions. A third factor is the nature of the constitution. Thus, in "state" governments of a federation, there are no departments for defence or foreign policy. Such matters are dealt with by the federal governments, as also are such matters as coinage, and posts and telegraphs. A fourth factor is the existence of overseas dependencies. Governments with no overseas dependencies do not require colonial offices. Fifthly, some portfolios represent historical survivals : the work is nominal. Examples of this type of cabinet post occur in Britain only—in the Lord Presidentship of the Council, Lord Privy Seal and Chancellor of the Duchy of Lancaster. These posts are usually filled by men whose presence is desired in Cabinet for political or personal reasons.

Essential Functions.—The most fundamental of executive functions are those which deal with the essential activities of governments. The first of these is the function of internal security, which departmentally is represented by the Home department, or as it is sometimes called, department of the Interior—the nomenclature varies from state to state. This department is responsible for the maintenance of internal peace and order. Although this is its primary function, it may also be responsible for subsidiary functions, the nature and amount of which vary according to the size and resources of the government concerned. The Home Office, in England, for example, is responsible not only for peace and order, but

for the administration of factory legislation, which in most other governments is under another department, such as the Ministry of Labour.

The second function is the provision of ways and means, or of finance. This department is represented by the Finance department or Treasury. This department is the most powerful of all, because, through audit, it regulates and controls expenditure, as well as provides money.

The third function is defence and war. Usually there are several separate departments for this purpose—dealing with the army, navy and air force.

The fourth function is the conduct of relations with other states. Departments of Foreign, or External Affairs deal with foreign policy. They are responsible for diplomatic negotiations, for the framing of treaties and agreements, and for the appointment of representatives in foreign countries. A characteristic feature of the work of foreign departments is that they largely work independently of other departments. The conduct of foreign affairs requires high technical skill, secrecy, accuracy of information and personal tact. Hence, though legislatures control the general trend of foreign policy, they rarely interfere in the practical administration.

Another essential function is the organisation of the system of justice, the conduct of government cases, the provision of legal advice and the drafting of laws, regulations, orders and rules. In most governments these functions are subdivided. One department is responsible for the organisation of the courts, judicial appointment, pardon, and other measures arising from the administration of justice. The same department may also be responsible for the provision of advice and conduct of government cases; but in large states, with ample resources separate organisations may deal with these duties. For example, in Great Britain, the Lord Chancellor is head of the judicial system so far as the organisation of the courts and judicial appointments are concerned, but for the provision of advice and the conduct of cases there are separate offices—Attorney-General, Solicitor-General, and Lord Advocate. In addition, many departments have their own legal staffs. For the drafting of laws the organisation varies from government to government, but usually a special staff of trained draftsmen is maintained which can be used by all departments. In India, this drafting function—in addition

to other functions—is usually performed by Legislative departments.

The above five functions are usually regarded as the most fundamental branches of government work; but no line of demarcation can be drawn between them and the other functions which all modern governments undertake. It is impossible to conceive of a modern government which could confine itself to these activities, omitting such subjects as commerce, education, agriculture, labour and communications. The day has long passed since the public conscience was ready to leave these subjects to the free play of individual enterprise. Co-ordination, regulation and control, initiative and encouragement, in many cases ownership, are regarded as essential in these fields; and the departments concerned are little less important in the eyes of the public than the so-called essential or major departments. The organisation, scope and purpose of the departments vary from state to state; but, in general terms, all governments have separate ministers, or departments dealing with the following subjects:—

1. Commerce and trade. The department of Commerce is responsible for trade negotiations with foreign countries, and, sometimes in conjunction with foreign departments, for trade treaties and agreements. This department is usually responsible for the regulation of the mercantile marine. It may also be responsible for laws dealing with internal trade, but this subject is sometimes dealt with by a separate department.

2. Education. Departments of Education are common to all governments, with the exception of federal governments in which the function is performed by the "state" or provincial governments. Education departments are usually responsible for the administration of all types of education, primary, secondary, university and technical. In some cases technical education is the function of a separate department, such as a department of Industries.

3. Agriculture. Most modern governments, except federal governments, in which the function is provincial, have ministries to look after the interests of the agricultural population. In some cases, the ministry deals with agricultural labour, as well as with the technical side of agriculture. The subject of co-operative credit is usually administered by

Agricultural departments, though in some cases it is sufficiently important to be a separate department.

4. Labour. In practically all industrialised countries, there are departments of Labour. These administer laws arising from such subjects as arbitration and conciliation, minimum wages, training for industrial employment, and unemployment insurance.

5. Health. This function becomes, departmentally, the department of Health or Public Welfare. In federal governments this too is usually a provincial subject. The supervision of health involves several activities. One is the supervision of the work of local bodies, as local bodies are largely responsible for the maintenance of sound conditions of public health. Another is the maintenance of public institutions such as hospitals and medical training schools; and a third is the administration of health measures, such as sickness or invalidity insurance.

6. Transport. Departments of Transport or Communications may be found in both federal and state governments, but the more appropriate agency is the centre, as co-ordination is required between the provinces. Departments of Communications are responsible for the control of railways, for the co-ordination of road, rail, river and motor traffic, and for the alignment, and sometimes maintenance of main roads. They also usually deal with commercial aviation.

7. Posts and Telegraphs. The department that deals with this subject must be at the centre, in a federal government.

8. Public Works. In most modern governments there is a separate department to deal with the property of government. The department arranges for the upkeep of buildings, erection of new buildings and cognate subjects. In some cases—as in Bengal—it deals with roads and bridges.

The above list contains the functions which are common to most modern governments; but only in a few governments would all the departments be found in practice. In the governments of important states, the list is considerably larger; in small governments, it is smaller, for some of the functions are combined under one head. The actual arrangements in individual states are determined by the requirements of administration. Thus, in Great Britain, there are separate departments for the Colonies, Dominions, India and Burma.

Several governments have colonial offices, but none except Britain has a Dominion, India or Burma office. So, in Italy, there is a ministry of corporations, and in the U.S.S.R., a State Farms Department. Other departments exist to suit local needs, such as Lands or Forest departments, Immigration departments, Fisheries departments, which are usually allied to Agriculture departments, Irrigation departments, and Mines departments. Temporary departments—such as the Pensions departments which were the result of the Great War—may be found ; also departments to co-ordinate effort in certain directions—such as the Ministry of National Economy in France and the Ministry for the Co-ordination of Defence in England.

The Royal Prerogative.—In Great Britain there is also the executive power known as the royal prerogative, which is, in the words of John Locke, "the power to act according to discretion for the public good without the prescription of law." In other words, it is the discretionary authority left in the hands of the Crown. The prerogative applies to those things for which the law does not make provision. Such residuary powers, i.e., those powers the exercise of which is not provided for in the constitution, are left in the United States to the state legislatures and the state executives. In France they are left to the legislature. In the United States, Germany and France, the head of the executive has definite statutory powers ; in England the Crown has general powers over all things not definitely regulated by statute or common law.

4. THE CIVIL SERVICE

The Civil Service.—The civil service consists of the paid officials serving in government administrative departments ; it does not include judges, officers of the army and navy and law-makers. Properly speaking, not all government officers are in the civil service, although the term is frequently used in a general way to designate all those paid from government funds. In India the term is used in a special sense : The Indian Civil Service, together with the provincial civil services, is used narrowly to designate different classes of officers appointed for general administrative work. Their main functions are connected with police administration, collection of revenue, and the administration of justice. In other govern-

ments, the term civil service usually means the clerical establishments of the government departments. The civil service as a rule is divided into classes, such as lower and upper, or class I and class II, for the purposes of recruitment and pay ; usually there is provision for promotion from the lower to the upper classes.

The officials of local bodies are not civil servants, even though local bodies to some extent be controlled by the government. Local bodies control their own staffs, though in some instances, at the request of local bodies, the staffs are recruited by the agency which is responsible for recruiting government servants e.g. a public service commission.

Public Service Commissions.—Recruitment of the civil services in most modern governments is made by a specially constituted agency, usually called a Public or Civil Service Commission. This body as a rule has statutory powers, the object of which is to make the members independent of political influence and of party or personal pressure. The members are usually given special terms of tenure, with a view to their not having any motive for seeking favours from any quarter ; for example, in India, the chairman of the Federal Commission is by law ineligible for further employment under the Crown in India, and the chairman of a provincial Commission can be appointed only to be chairman or a member of the Federal Commission. Members of the Federal and provincial Commissions are ineligible for other official appointments without the special permission of the head of the administration, Governor-General or Governor, as the case may be.

Functions of Commissions.—The functions of Public Service Commissions are best described in the appropriate section of the Indian Constitution—section 266 (3) of the Government of India Act, 1935, which enacts that "the Federal and Provincial Commissions shall be consulted : (*a*) on all matters relating to methods of recruitment to civil services and for civil posts ; (*b*) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers ; (*c*) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India, including memorials or petitions relating to such matters ; (*d*) on any

claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Federation or, as the case may be, the province ; (*e*) on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and any question as to the amount of any such award," and the Act says, " it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the Governor-General in his discretion, or, as the case may be, the Governor in his discretion, may refer to them."

The Examination System.—The examination system has proved the most satisfactory method of selection for the civil service. The examination system is now almost universal. The type of examination system most commonly in use is the direct system, under which candidates are recruited according to order of merit, without nomination ; but sometimes nomination is combined with examination. The pure nomination system has proved itself liable to abuse. This was particularly noticeable in America in the days before the reform of the civil service, when executive posts were given as rewards for help in elections. The whole executive department was liable to be changed after the periodical elections. No good work was possible under such a system. In most modern governments there is continuity and security of tenure in the civil service. In countries with responsible government the political heads of the departments change with the change of the cabinet ; thus, in the United Kingdom, the cabinet member for any department and his parliamentary under-secretary change with every change of government, but the permanent under-secretary, who is a civil servant, does not change nor do the officials under him, so that the continuity of action so necessary in executive work is secured in spite of party or political changes. In India, the custom has grown up of the highest departmental officials, such as secretaries to government, having limited tenure. The period varies from government to government but the usual term is three or four years. In India, the higher executive officials are recruited from the general administrative services, the Indian and provincial civil services,

and limited tenure is prescribed in order first, that the officials may not lose touch with district or provincial conditions, and, second, that the best posts should not be a monopoly of a few persons only. The office, or clerical staffs in the departments are permanent.

B. THE JUDICIARY

1. MEANING OF JUDICIARY, AND JUDICIAL APPOINTMENT

Functions of the Judiciary.—The term "judiciary" is an Americanism used to designate those officers of government whose function it is to apply the existing law to individual cases. To a judge it is a matter of no importance whether in his opinion the law is good or bad: his duty is to apply it. He is primarily an interpreter of law. No law, however, when it is made, can possibly foresee all cases that may arise under it, and frequently judges have to decide cases in which no direct law is applicable. Such cases are decided on various principles, such as equity or common sense, and thus what is known as precedents are formed. These precedents are followed by other judges in similar cases. In this way judges are law-makers as well as interpreters of law.

Essential Qualities in a Judge.—Two qualifications are supremely necessary in a judge—(*a*) knowledge of law, (*b*) independence. He must be a fair-minded, reasonable man whose pecuniary prospects and personal comforts are not dependent on his judgments, and must, therefore, be free from any outside pressure or temptation to better his pecuniary circumstances by illicit means. The method of selection and the tenure of judges are matters of the greatest importance.

Method of Appointment.—There are three methods for the appointment of judges, and the goodness or badness of these methods is to be judged according to the amount of freedom and independence secured for the judge.

1. **Election by the Legislature.**—Election by legislature, which is not a common method. In fact, there is only one European example, Switzerland. Very little can be said for this method. In the first place, modern party government is so highly organised that election by the legislature usually means election of party candidates. This in its turn leads to the usual party intrigue and interest. In most cases the peculiar qualifications necessary in a judge take second place to party

interests. To be a party candidate at all a judge must show strong bias in one direction. Such party election encourages a type of judge far removed from the ideal of fairness and reasonableness which judicial decision demands. Again, election by the legislature is not in accordance with the spirit of the separation of powers, particularly that part of it which demands the separation of the legislature and judiciary. After the American Revolution this method was actually employed by some of the American states, because the makers of the constitution feared that both executive appointment and popular election might fail to secure the proper type of judge. Except for one or two states, the system is now dead in America.

2. **Popular Election.**—Popular election, which prevails chiefly in the individual states of the United States of America. The executive appoints federal judges in the United States. Popular election is the worst method conceivable. In modern democracy popular election means party election. Party election means the subservience of the individuals seeking election to a section of popular opinion. Candidates have to pander to the prevailing opinions. In no way can they show that independence of attitude or freedom from fear or favour which are essential in a good judge. Further, the electorate cannot possibly appraise the qualities necessary for judicial office. In the United States there are innumerable examples in which good candidates have been beaten at the elections. Popular election is still worse where the tenure is short and the judge is eligible for re-election. Where re-election depends on popular favour no judge can be independent.

3. **Appointment by the Executive.**—Appointment by the executive is the most common and most satisfactory method for the choice of judges. The executive government is the agency best able to judge the personal qualities necessary for judicial office. The executive can always ask for the advice of the highest experts as to the qualities required for a particular post, and they can search about until they find the proper type of man for it. It may be pointed out that where the executive is responsible to the legislature, freedom from party politics cannot be expected from the executive any more than from the legislature or the electorate. In actual practice, however, appointment by the executive is free from party politics. The appointments are made according to the recognised requirements of honest judicial work.

Tenure of Appointment.—The tenure of judges is as important as the method of appointment. The most prevalent rule of tenure is during good behaviour. In some of the American states where election by the people prevails, there are short periods of tenure with the possibility of re-election. Tenure of this kind is as vicious as the method of popular appointment. Independence in a judge demands security in his post. Removal must be a difficult process, but not impossible, as it would be intolerable to allow a corrupt judge to continue to hold office for life ; it should be a process involving much consideration, and should pass through the hands of more than one person. The system which once prevailed in Great Britain, whereby the King could remove judges at will, proved very bad. By removing judges he did not like and by appointing those he did like the King was able to have cases decided at his pleasure. In Great Britain now a judge can be removed by the King only on an address from both Houses of Parliament. In the United States of America, the method of removal by impeachment prevails, that is to say, the Lower House accuses the judge and the Upper House tries him. To prevent party trials, a large majority is necessary for conviction. In Germany, the court which tries a judge is one of which he himself is a member and the same court may recommend his dismissal. In India, judges hold office during the pleasure of the Crown. Judges of the Federal Court and of High Courts are removable by the Crown for misbehaviour or infirmity, on a report of the Judicial Committee of the Privy Council. This rule applies in most of the dependencies which are not Dominions, and the "pleasure of the Crown" means service during good behaviour, with an age limit.

Salaries.—It is obvious that if judges are to be independent they must be made as free as possible from pecuniary temptation. They must be given good salaries and their salaries should not be alterable during their tenure of office. This rule is prevalent in most modern governments.

2. ORGANISATION OF THE JUDICIARY

Common Features in Judicial Organisation.—Certain features are common to the organisation of courts of the world. In the first place, courts are arranged on an ascending scale with a right of appeal from the lower to the higher. Ultimately there is a supreme court with powers of final decision.

The higher courts may review, revise or break the decision of the lower. In the second place, they are divided, although this division is not universal, into sections according to the work done. The most usual division is civil and criminal ; but courts may be set up for particular purposes, such as land acquisition. In the third place, in federal governments there are usually two sets of courts, federal and state courts. Thus in the United States of America, each state has its own judicial organisation and its own law and procedure. The federal government also has a judicial organisation. The state judges have to take an oath that they will faithfully follow the laws and treaties of the United States, and that they will enforce the greater law, i.e., the law of the United States, in cases of conflict. In the Dominion federations and India there is also a federal judicial organ—the Supreme Court in Canada and Australia, and the Federal Court in India. The jurisdiction of these courts differs. That of Canada is very wide ; the Supreme Court has appellate, civil and criminal jurisdiction throughout Canada. The Australian Federal Supreme Court too has wide powers, both original and appellate, but the Federal Court of India is limited, with respect to its original jurisdiction, to disputes between the federation, the provinces and federated States, and, with regard to its appellate powers, to questions of law arising from the interpretation of the constitution. The federal legislature may however widen the appellate jurisdiction of the Federal Court, within prescribed limits.

Judicial Organisation in Modern Governments. 1. England.—(1) For a full description of the organisation of the judicial system in England, the student must refer to the chapter on the constitution of the United Kingdom. From early days the administration of justice in England was centralised. The King was the source of both law and justice, but as no king possibly could carry out all the functions of a judiciary, his work was sub-divided. Judges went on circuit from London, and the Court of Chancery, which remained permanently in London, controlled the courts. During the nineteenth century, from 1873 to 1879, the jurisdiction of the courts was reorganised. A certain amount of decentralisation was introduced, and county courts were established. These took upon themselves many of the duties of the old circuit judges. At the present time in England the House of Lords is the last

court of appeal. Technically, the whole House of Lords is a judicial body, but in practice the judicial work is done by the Lord Chancellor, law-lords specially created because of their proficiency in law, and peers who have held high judicial office. Next to the House of Lords comes the Supreme Court of Justice, divided into two parts which are really two distinct courts, viz., the Court of Appeal, and the High Court of Justice, an appeal lying from the latter to the former. The High Court of Justice is sub-divided into three parts: (1) the Chancery division, consisting of five judges, and the Lord Chancellor; (2) the King's Bench division consisting of fifteen judges, of whom one, the Lord Chief Justice, is the President; (3) the Probate, Admiralty and Divorce division, with two Judges of whom one presides over the other. Judges of these courts go on circuit to various parts of the country for what is known as assizes. Below these courts are the county courts and the Justices of Peace. The J. P. acts singly and conducts preliminary examinations or issues warrants. Two or more J. P.'s may hold what is known as petty sessions of the justices of the county, and may meet four times a year for more important judicial work in quarter-sessions.

The jury system is universal in England for all criminal cases, excepting petty offences. In civil cases the jury is not so common although any party may demand a jury.

The Lord Chancellor, who presides over the House of Lords, is the head of the legal system in England. He is a member of the Cabinet and is appointed by the King on the recommendation of the Prime Minister. The Lord Chief Justice, who presides over the King's Bench, is also appointed by the King on the recommendation of the Prime Minister, but all other judges are appointed on the recommendation of the Lord Chancellor.

2. **France.**—In France there are two sets of courts: (*a*) ordinary, for the trial of private individuals; and (*b*) administrative, for the trial of officials. The Cassation Court at Paris is the final judicial authority in the case of the ordinary courts. Below this there are courts of appeal which hear cases brought from the lower local courts. There are also justices of peace who have certain powers in petty cases. The administrative courts are headed by the Council of State; below this Council of State is a number of courts all of which are directly subordinate to it. There is also a Tribunal of Con-

flicts to decide disputes as to whether the jurisdiction in a particular case belongs to the administrative or to the ordinary courts. The jury system in France is used for criminal cases only. An important official in the French judicial system is the examining magistrate, who conducts preliminary examinations in criminal cases. This examining magistrate (or *juge d' instruction*) may dismiss a case, or he may send it to the ordinary courts to be tried.

Judges in France are appointed by the President and the Minister of Justice. Their tenure is for life or during good behaviour.

3. **Germany.**—In Germany the judicial system is now centralised ; all the courts are now organs of the central government. Previous to the centralisation, which was effected in 1935, the German judicial system was a combination of federal and judicial elements, with a strong bias towards centralisation. The procedure and organisation of all courts was determined by the supreme court, the Reichsgericht, which sits at Leipzig, although the courts in the states were subject to the states with respect to other matters, such as judicial appointment. The Reichsgericht is now the apex of a series of courts in all of which a uniform system of law prevails.

4. **The United States.**—In the United States there are two series of courts, federal and state. Each state has its own courts for both civil and criminal law. These are arranged in grades with appeal from the lower to the higher. The method of appointment of judges varies from state to state. Sometimes they are appointed by the executive, sometimes they are elected. In the federal courts, judges are appointed by the President with the consent of the Senate. The Federal Court consists of a Supreme Court, two sets of circuit courts and several district courts.

5. **India.**—In India, there are two types of courts, the Federal Court and the provincial courts. The Federal Court, created by the Government of India Act, 1935, has strictly circumscribed jurisdiction, though, if the Governor-General agrees, the federal legislature may enlarge its appellate authority. The Federal Court has jurisdiction in constitutional cases only. Its original jurisdiction is confined to disputes between the federation, provinces and federated States, " if and in so far as the dispute involves any questions (whether

of law or fact) on which the existence or extent of a legal right depends," provided that a dispute to which a State is a party is of a constitutional character. The appellate jurisdiction of the Federal Court lies in hearing appeals from a High Court with regard to constitutional questions, provided the High Court considers that a substantial question of law is involved.

The judicial system in the provinces is centred in the High Courts. The Government of India Act 1935 declares that the following courts in British India shall be deemed to be High Courts—the High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore and Patna, the Chief Court in Oudh, the Judicial Commissioner's Courts in the Central Provinces and Berar, in the North-West Frontier Province and in Sind ; any other court in British India may be constituted or reconstituted as a High Court by an Order in Council. The jurisdiction of these High Courts is the same as it was before provincial autonomy was introduced.

The organisation of the present judicial system in the Provinces dates from the Indian High Courts Act of 1861. By this Act the Crown was empowered to create High Courts of Judicature for Bengal, Madras, and Bombay, and, later, for the United Provinces, Bihar and Orissa, Burma and the Punjab. The jurisdiction of these courts is fixed by the Crown. In Bengal the High Court is vested with ordinary original jurisdiction in regard to all suits except small causes within the presidency town. Appeal may be made from a judge on the original side to a bench on the appellate side. By its extraordinary original jurisdiction, the High Court may try any suit on the file of a subordinate court on the application of the parties or in the interests of justice. The High Court is also a court of appeal from all the lower civil courts. It has, in regard to the persons and estates of infants, idiots, and lunatics, the powers which had previously been invested in the Supreme Court. The Supreme Court was the creation of the Regulating Act of 1773. It consisted of a chief justice and puisne judges, who were professional lawyers. The High Court also has jurisdiction over the relief of insolvents and cases between Christian subjects and the King. It also has the jurisdiction over admiralty, ecclesiastical, and testamentary matters which belonged to the old Supreme Court. It has ordinary criminal jurisdiction within its own area, and extraordinary original criminal jurisdiction over all persons

within the reach of what is known as the old *sadar adalat*, or court of the head-quarters area. Trial by jury is the rule in original criminal cases before the High Court, but juries are not employed in civil suits.

The constitution of the inferior criminal courts is fixed by the Code of Criminal Procedure. Each province is divided into sessions divisions, which may comprise one or more administrative districts. For every sessions division there must be a sessions judge, and, if the work demands it, there may be an additional or an assistant sessions judge. The functions of these sessions courts are similar to those of the judges of the High Court in England when they go on circuit. They can try all persons duly committed for trial, and can inflict any punishment allowed by law. But every sentence of death must be confirmed by the highest court of criminal appeal in the province. Below these courts are the magistrates' courts, at the head of which is the district magistrate. The magistrates' courts are divided as a rule into three classes according to their jurisdiction. There are also honorary magistrates with statutory powers both in urban and rural areas.

For the administration of civil justice provinces are divided into districts which usually correspond to sessions divisions; one district and sessions judge is appointed for the district and sessions division. District courts exercise appellate jurisdiction over the subordinate civil courts in the districts. The subordinate judiciary is divided into two classes and hears suits up to amounts prescribed by law. Their jurisdiction varies from province to province. Besides these courts are the presidency small cause courts, invested with power to try suits up to two thousand rupees in value. In Madras there is a city civil court with power to try suits up to two thousand five hundred rupees value. Other judicial institutions are revenue courts, which deal with cases connected with the land revenue, courts for land acquisition, coroners' courts, and courts for special purposes, such as insolvency.

The supreme court of appeal for India is the Judicial Committee of the Privy Council, which was constituted by Parliamentary statute in 1833. This statute requires that the Committee shall be composed of those privy councillors who are, for the time being, Lord President of the Privy Council and Lord Chancellor, those who fill or have filled

high judicial offices, two other councillors specially designated by the Crown, and two councillors with Indian and colonial experience (of whom one is now an Indian). The members of this Committee are appointed as Privy Councillors by the Crown, and are subject to dismissal by the Crown and to impeachment by Parliament. The Privy Council is the final court of appeal from both the Federal Court and the provincial High Courts. This is a unique position, as the normal appellate machinery in the Dominions is from the Supreme Court. The Government of India Act, 1935, however empowers the Federal legislature to make the Federal Court an appeal court from the High Courts ; the same authority also may provide for the abolition in whole or in part of direct appeals from the High Courts to the Privy Council.

3. THE RELATIONS BETWEEN THE JUDICIARY AND THE LEGISLATURE AND BETWEEN THE JUDICIARY AND THE EXECUTIVE

The normal relation prevailing between the judiciary and the legislature is that the legislature makes the law and the judiciary interprets it in individual cases. In some states the legislature itself or one of the houses of the legislature retains judicial powers. In England the House of Lords is the highest court of appeal although in practice its legal work is performed by the law-lords and the Lord Chancellor, all of whom are highly qualified lawyers. In the United States of America, although the theory of the separation of powers prevented any considerable judicial power being given to the legislature, Congress has the power of impeachment. The French Senate also has the power of impeachment.

In Rigid Constitutions.—In states with rigid constitutions, courts exercise enormous powers over both the legislature and the executive, because they can declare a law unconstitutional. In England the only type of law which the courts can declare *ultra vires* or beyond the powers of a law-making body are those made by subordinate legislative bodies. In the United States of America, the courts may declare the laws made by the supreme law-making body unconstitutional. Thus the legislature must always keep in mind the fact that if the laws it makes clash with constitutional law the courts will declare them null and void. What actually happens in a case of

conflict is that the courts simply declare the law inapplicable. In other countries with rigid constitutions the courts do not determine the constitutional character of law passed by the highest legislative authority. In Germany, under the federal system, the Reichsgericht decided whether laws passed by the states were in harmony with the federal law, but it did not declare a federal law *ultra vires* if that law was not in harmony with the constitution. The German legislature decided for itself whether a law was constitutional or not. The same is true in France. The theory underlying this practice is that, if the representatives of the people wish to make a law, the constitution should not stand in the way.

In the English system parliament is its own judge. Every law passed by parliament in England is constitutional. In the British Colonies and India laws passed must be in harmony with the constitutions, which are based on parliamentary statutes.

Case Law.—The inter-relation of the judiciary and the legislature is also seen in case-law or judge-made law. Judges not only interpret the law : they also make law. Every law is general, and in drafting a law, a law-maker cannot possibly foresee all the cases or circumstances that may arise under it. Judges have to decide all disputes which arise under a law, and in cases where it does not give clear and adequate provision, the judge must fill in the gap. Such decisions are followed by other judges. Judges, both by their position and by their training, are the fittest people for such interpretation. The executive has often considerable powers of deciding and interpreting matters in which there is no definite rule, but in all important and final matters the duly constituted judges should be the deciding authorities.

The Judiciary and Executive.—The judicial and executive branches of government in practice are normally sharply divided. Courts should be independent of official interference. Nevertheless, the executive and judicial functions impinge on each other at certain points. In the first place, the executive government has usually considerable judicial powers, irrespective of and independent of the courts. Such powers are normally conferred by law ; and there is a tendency in modern government, much resented by many lawyers, to give more and more powers of adjudication to executive officers, for the reason that reference to courts causes both delay and

expense, and hampers efficient administration. In many cases, reference to courts is expressly forbidden. In the second place, the judiciary has considerable powers of administration, and control over the executive. In the third place, the executive as a rule controls judicial appointments, and also is responsible for the carrying out of judicial decisions. In the fourth place, there are various kinds of executive courts, especially for government servants, e.g., the court-martial. There is now a tendency to give statutory powers to courts of this type in order to prevent arbitrary use of power. In the fifth place, the pardoning power belongs to the executive.

4. ADMINISTRATIVE LAW

Meaning of Administrative Law.—In Great Britain, the United States, and in India, every citizen of the state is subject to the same law and to the same process of law. The ordinary law courts deal with private individuals and public officials in both their private and their public capacities. Every one in England, from the Prime Minister to a police constable or to a pauper, is subject to the same law. Even soldiers are subject to the ordinary process of law although, for matters of military discipline, they are subject to military courts. On the continent of Europe the system of administrative law prevails. By this system special law and special machinery exist to deal with government officials in their relations both with private individuals and between themselves. All controversies arising from the public duties of these officers are settled in these administrative courts.

The existence of administrative courts is *partly explained* by the theory of the separation of powers. Executive officers, according to the theory, should be free to carry out their duties without interference from the ordinary courts of the land. Expert courts, composed of men who have experience in civil administration, are the best courts for dealing with administrative cases. Courts of this type do not, like the ordinary courts, hamper, or mar the efficiency of the administration. Judges of the ordinary courts of the land have a bias in favour of private citizens against government officials, which means a lack of justice in official cases as well as less efficiency in administration. According to this theory, the administration possesses a special body of rights and privileges as against private citizens. Special rules and laws are made

for officials. The law is made by government officials, and, as it is largely case-law, is very elastic. Ordinary tribunals have no concern with administrative law. Remedies can be exacted by administrative decisions, but these remedies can be obtained only through the administrative courts themselves.

The system of administrative law is contrary to the whole spirit and practice of the administrative system prevalent throughout the British Empire and in the United States. According to English ideas, the liberty of the individual is far more secure if the official as well as the ordinary person is subject to the ordinary courts of the land. The judges of the ordinary courts are looked on as capable of giving absolutely fair judgments in all cases. Their appointments are secure from interference by the executive. In France, on the other hand, the administrative judges have no security of tenure. They are appointed and removable by the executive itself, and not unnaturally their judgments are sometimes biased in favour of officials. To English ideas administrative courts are unjust and undemocratic: one law for all is better than one law for the privileged class of government servants and another for private individuals. It is true that in times of national crises, such as war, the administration may be more efficient if executive officials are free from judicial interference; but in England, where parliament is supreme, it is easy to secure temporary immunities for such occasions by legislative enactments.

Conflict of Jurisdiction.—Where administrative courts exist alongside of the ordinary courts of the land, conflict of jurisdiction must arise. In France a Tribunal of Conflicts determines whether cases belong to the ordinary or to the administrative courts. A great deal depends upon the constitution of this Tribunal of Conflicts. Professor Dicey, in surveying the French system of administrative law, concludes that the French Tribunal of Conflicts is more an official than a judicial body, and that its decisions as a rule are made in the interests of the administration. As Professor Dicey points out, the natural idea of Englishmen is that conflict should be tested by a normal judicial court, a court composed of the ordinary judges of the land. This is directly opposed to the French principle that administrators should never be disturbed by the judicial power in the exercise of their own duties. In England the judiciary often interferes in executive matters,

sometimes with far-reaching results. In some cases the executive has been very seriously hampered by the courts in the execution of its duties, but this very principle is regarded by Englishmen as one of the chief guarantees of individual liberty. The independence of the judiciary in England thus is in accordance with the spirit of the separation of powers. Administrative courts, though in origin they may be explained by the theory of separation of powers, are really a negation of it.

CHAPTER XV

PARTY GOVERNMENT

I. THE MEANING OF POLITICAL PARTY, PARTY DIVISION, AND THE MERITS AND DEMERITS OF THE PARTY SYSTEM

General Meaning of Party.—One of the most notable developments of modern democratic government is the rise of political parties. So universal are they that it may fairly be said that parties are essential to democracy. In its widest sense party means a number of people joined by common opinions on a given subject. There are parties in a church, a municipality or a university. As a rule parties recognise someone as leader, who usually is the ablest exponent of the particular views held by the party. Behind party is the idea that union is strength. Whereas individuals acting alone cannot secure victory for their opinions in councils, they can do so when united. Often it is advisable for individuals to sacrifice their own opinions in order to join a party leader or organisation.

Political Parties.—Political parties resemble in principle parties in municipalities or universities. People holding similar opinions on political questions form a party. In political matters there is usually a great variety of opinions, and theoretically there may be as many parties as there are opinions. In practice, however, opinions tend to flow into a few more or less definitely marked channels. The necessity for organisation in matters affecting government is even more marked than in smaller councils, and parties tend to be organised

as broadly as possible. Each party tries to gain numbers, so that if there is a certain general agreement among members in important matters, disagreement in matters of detail does not count. A political party may thus be defined as an organised group of citizens who profess to share the same political views and who, by acting as a political unit, try to control the government. The chief aim of a party is to make its own opinions and policy prevail. To do so it is necessary to control the legislature in the state. To control the legislature means that party representatives must be in a majority in the legislature. Parties, therefore, are organised in order to manage elections ; the more members they can command the more control they have over legislation. Sub-division in a party is disastrous ; introduction of any sort of cleavage immediately splits the vote and gives opposing parties an opportunity.

The Party System.—There is no theoretical reason why the party system should be essential to democracy : indeed, the underlying principle of democracy, that all citizens should have a voice in government, seems directly opposed to party grouping, with its organisation and strict discipline. Party government is the result of practical experience, and, peculiarly enough, that experience shows that the fewer the parties, the more effectively democratic government functions. The multiple party system, which used to prevail in Germany and Italy, and still does prevail in France and other continental countries, does not work so well as the two party system of Britain and America. Where the multiple party system has worked well, the parties have aligned themselves in two coalition groups, such as Right and Left parties. Strictly speaking, in Great Britain and the United States there are more than two parties, but the people of these countries do not favour third parties. The two leading parties in Great Britain are the Conservative and Labour parties. The Labour party is relatively new ; till after the Great War, it had a small following. The pre-war parties were the Conservative and Liberal, but in the post-war period, the Liberal party was crushed out. Though still in existence, it is weak. The British people prefer two strong parties. In the United States, the two chief parties are the Republican and Democrat. There is a Labour party, but it has not yet secured a powerful enough following to challenge the others.

The party system in democratic countries is an extra legal growth. Although it has developed gradually outside the legal system of democracies, it has become as indispensable as law itself. It is not too much to say that the whole machinery of government depends on it. In America the election of the President and of the members of Congress depends on party organisation. The party system is really the method whereby the too great rigidity of the American constitution has been broken down. In Great Britain the central fact of government, the Cabinet, depends on the party system. The functioning of the modern dictatorships—the U.S.S.R., Germany and Italy, is also directed by a party system : in their case it is one party only—respectively the Communist, Nazi, and Fascist parties. The use of "party" in this case is really a misnomer ; "party" involves difference of opinion, whereas dictatorships allow no opposition. In the dictatorships the party system has partly been incorporated in the constitutional law of the state.

The Origin of Parties.—It has been pointed out by some writers that party division is a natural outcome of government by discussion. Party cleavage, it is said, is the result of the fact that there is a Yes and No to every question. This would be true were all parties divided on particular questions. What is found in practice is that parties divide on different grounds. Some parties are formed to further class interests. The most conspicuous example of parties of this type is the Russian Communist party, an essential principle of which is the Marxian class war. Modern Labour parties provide another example. Their primary purpose is to further the interests of working classes. Other parties of this class are formed to bring into effect a theoretical view of the end of the state. Socialist parties, for example, endeavour to secure a collectivist, as against an individualistic type of social organisation. Other parties exist for particular political purposes. The Irish Nationalist party existed to secure Home Rule for Ireland. Once the object of such parties is secured, they automatically cease to exist. Other parties, again, arise for the defence of a sect or branch of the church. Such parties, though many of them have lost their original character, are common in continental politics. Economic interests frequently lead to the formation, or alteration of existing parties in such a way as to make them practically new parties. The question of

free trade *versus* protection in Britain, for example, materially altered the composition of the old Liberal and Conservative parties. Race is another, though less common ground of party division. Racial parties used to exist, mainly for the protection of minorities in the old Austro-Hungarian union in which there were several racial elements, and in Germany. The Nazis and Fascists provide examples of still another type of party. They came into being to secure certain immediate objects, such as the restoration of peace and order and the reinvigoration of the national consciousness, and remained in power by suppressing all other parties. They are parties of action, the theoretical basis of which is elaborated after they have seized power.

Four General Types of Party.—Except where general tendencies are obscured by individual questions, it is generally possible to recognise at least four types of social or political thought : (*a*) Radicals, those who wish the present institutions to be altered root and branch (the word radical comes from the Latin word *radix*, which means a root); (*b*) Reactionaries, those who wish to return to the older state of things. These are the extremes ; the means are—(*c*) Liberals, those who wish reform of present institutions, and (*d*) Conservatives, those who wish to "conserve" or keep existing institutions as they are. These four classes shade off into one another. In each class the same four grades of opinion might be detected. Thus in the Liberal party there are some who are very near to Conservatives on the one hand, and some very near the Radicals on the other. There is also a number of moderates, with leanings to one extreme or the other. The essence of political parties is organisation to attain control of the government, and this necessity keeps minor differences of opinion in check. It often happens that members of widely different opinions on all other matters will unite on particular questions. They agree to sink their other differences for the sake of unity on one question. Thus, when the Irish Home Rule question split Mr. Gladstone's Liberal party in 1886, several members of the Liberal party went over to the Conservatives (who after that were usually called Unionists) and, because of one important difference with the Liberals, cast in their lot for ever with the Conservatives.

In Federal Systems.—In federal systems of government another line of distinction may be drawn, viz., centrifugal

and centripetal, i.e., the parties which support concentration of authority in the central government, and the devolution of authority to the provincial or "state" governments.

Merits and Demerits of Party Government.—Although the party system has become essential to modern democracy, it is not without its critics. The most serious objection to party government, especially the two-party system, is that it destroys individuality. It tends to make the political life of a country machine-like or artificial. The party in opposition or, as it is sometimes called, the Outs, is always antagonistic to the party in power, or the Ins. It does not matter what the question may be: the proposed law may be perfectly good, but it must be opposed as a matter of party principle. On the other hand, it is claimed that this artificial antagonism always ensures every aspect of the question being taken into account. It is the business of the opposition party to criticise and to find as many faults as possible in any proposed law. This makes the party responsible for the law eager to avoid mistakes and to try as far as possible to meet every reasonable point of view.

The destruction of individuality follows really from party organisation. For party government party unity is essential. There is therefore no room for the "independent" member. The "independent" member, who prefers to hold to his opinion even if it is at variance with that of his party, is a danger, as he destroys its unity. The party therefore must either pacify him by promising or giving him office when in power, or it must get rid of him. Parties are so highly organised that they can easily get rid of a recalcitrant member by refusing him recognition. Such refusal means that he cannot be adopted as the official party candidate at the elections, which is tantamount to his being unable to secure a seat.

It may also be said against the party system that it tends to pass into the hands of caucuses, or private cliques, which arrange matters to suit themselves. Thus frequently the best men of the country are excluded from the chief posts in government. This is true in two ways: first, as in America, where the party machine is so powerful as to exclude all from power who do not work with it; and, secondly, because the best men of the party in opposition cannot be given office in a system of cabinet government. It is an open question,

however, whether these men do not perform a more useful function by being in opposition, that is, the function of responsible critics, who may be called upon at any moment to shoulder the burdens of government. As critics their functions are not wholly destructive, and they undoubtedly secure care in the constructive work of those in power. And the party in power must put its ablest men in office in order to survive against the opposition. The vital part the opposition plays in parliamentary government is strikingly testified by the fact that the leader of the opposition in the House of Commons is paid a salary, from official revenues.

Party government, its enemies point out, means excessive pandering to the people. This results in popular legislation, not for the good of the country but to catch votes. Popular legislation of this type, it is said, is usually unscientific, bad legislation. But government really rests on public opinion, and to reflect that opinion in laws is really the aim of government. Party government therefore is really a powerful instrument for the fulfilment of the purposes of the state.

Electors, again, it is said, may be mis-educated by party organisation. Parties try to impress on them the truth of their own views and the falsity of those of others. In this way parties are often guilty of the sins of *suppressio veri* and *suggestio falsi.* But each elector is well supplied with the views of all parties, however distorted they may be, and he is left to draw his own conclusions.

The party system, further, it is said, raises artificial difficulties for the executive. On the other hand, the party system means strict supervision of the executive, for the opposition is always on the alert for any executive blunder or scandal, a fact which cannot but have a good influence on the executive.

One of the oldest and most frequently quoted drawbacks of party government—that it encourages loyalty to party at the expense of loyalty to state—was partially disproved by the Great War. At the beginning of the war the leading parties immediately sank their peace-time differences and loyally co-operated to secure victory. This co-operation resulted ultimately in a coalition government, which was representative of all parties. In normal times, however, the party in opposition sometimes adopts means which are

disloyal or dangerous to the public peace in order to embarrass and discredit those in power.

One of the worst features of party government is the bitterness of feeling, rancour, and spiteful, undignified speeches which result, especially at election times. Party elections excite people. It is not uncommon to find men who have never before seen each other, enter into the most heated arguments at meetings or on the streets. Among the lower classes it is not an unusual thing to see a fight result. Such incidents do not lend dignity to public life.

Summarily, it may be said that the dual party system tends to diminish the instability that attaches to parliamentary government, and to render the criticism of governmental measures more orderly and circumspect ; but it also tends to make party spirit more comprehensive and absorbing, party criticism more systematically factious and the utterances of ordinary politicians more habitually disingenuous.

2. THE MODERN PARTY SYSTEM

No two countries have the same party system, but a general distinction can be drawn between those which have the two-party system, and those which have the multiple-party system. The one-party system of modern dictatorships is not strictly speaking a type of party government at all, for the essence of party government is the existence of more than one party. The minimum number of parties must be two, and, as already indicated, parliamentary government functions most successfully where there is this number. A two-party system does not literally mean that there are two parties only; in no modern democratic government is this true. But in two outstanding examples, Great Britain and the United States, there are broadly two parties which absorb the great majority of the electors.

A short analysis of the party system prevailing in Great Britain, the United States, and on the Continent of Europe will illustrate the party systems of the modern world.

1. **The Party System in Britain.**—The party system of Great Britain dates back to the Elizabethan age, when the Puritans opposed the Crown. The Puritans represented the current desire to secure constitutional government as against the arbitrariness of the royal prerogative. With the increasing arbitrariness of the first two Stuart kings, James I and

Charles I., the Puritans gained in strength. They were united, and were able to secure seats in parliament. Their opposition to the Crown became very marked in the Long Parliament of 1641. In this parliament we have the first example of real parliamentary parties. The one party supported the Crown and prerogative, the other supported constitutional government. The opposition resulted in the Great Rebellion or Civil War, which ended in 1649 with the execution of Charles I. The parties were known as the Cavaliers, the supporters of the king, and Roundheads, the supporters of parliamentary government. These names, like the latter names of Whig and Tory, were given in derision.

After the Restoration, in 1660, of Charles II., the Cavaliers were complete masters in political matters, but party divisions again became marked in the debates on the Exclusion Bill in 1679. The purpose of the Exclusion Bill was to prevent the King's brother (later James II.) from ascending the throne. The names "Abhorrers," those who abhorred petitions sent to the Crown for the summoning of parliament, and "Petitioners," those who petitioned the King to summon parliament, were given to these parties. These names were soon supplanted by the well-known nick-names of Tory (an Irish word meaning highwayman) and Whig (a word meaning whey-face). The Tories were the supporters of the royal prerogative; the Whigs were advocates of parliamentary sovereignty or constitutional government.

The names Whig and Tory continued for a century and a half, one of them indeed, Tory, still being used derisively for the present Conservative party. The present party system however did not take root till the reign of George I., when Walpole became the first Prime Minister and the modern cabinet system started. William III. had chosen his minister from the more numerous party, the Whigs, a ministry known in history as the Junto. This Junto did not resign, like a modern party ministry, when it was not in a majority in the House of Commons.

With the change in the political complexion of the country the views of the parties changed. After the Revolution of 1688, when the Stuart dynasty was ejected, many Tories who were supporters of the Crown became Jacobites, or supporters of the Stuarts, as against the Houses of Orange and Hanover. The death-blow was dealt to the Stuart cause in 1745, and,

with the disappearance of the Jacobites as a political force, the Tories entered into the national life as it existed under the Hanoverian kings. The parties became divided on general principles of government. With parliamentary supremacy a realised fact, the old distinction no longer applied. The Tories came to be looked on as upholders of the present condition of things, of stability and order; the Whigs were regarded as the promoters of reform and progress. In the nineteenth century the party names changed to the more intelligible ones of Conservatives (Tories) and Liberals (Whigs). With the union, in 1801, of Great Britain and Ireland, there came another party element which grew in strength as the century advanced. These were the Irish Nationalists, who demanded "Home Rule" for Ireland. In Mr. Gladstone's ministry of 1886 a Home Rule Bill was introduced which completely broke up the Liberal party. Those who refused to accept the Bill went over to the Conservative party, which from then onwards was also called the Unionist party. The term Liberal-Unionist was used for many years to designate those who previously had been Liberals but who refused to continue in that party after the Home Rule Bill. With the creation of the Irish Free State in 1922, the Irish Nationalists disappeared from British politics.

Present Position.—At the beginning of the present century, with the growing self-consciousness of the manual working classes, and with their consolidation into groups by means of trade unions, a new party, the Labour party, began to make its influence felt. Its political advance was rapid, and, after the Great War, it became the second most powerful party in the country; indeed, for a short period, it was the party in power though its tenure was partly due to coalition with the remnants of the Liberal party. The Liberal party, though still well organised, has dwindled in numbers, and is now an insignificant force in party politics. Its supporters have split into two branches, one, the moderate wing, has gone over to the Conservatives; the other, of more advanced views, has identified itself with the Labour party.

Party divisions in Britain have been somewhat obscured in recent years by the formation of the Nationalist party. This is not an organised party, but a coalition of all those who supported the government in the financial and economic crisis which overtook the world from 1929-31. The Nationa-

lists belonged to all parties—Labour, Liberal and Conservative, but the bulk of them were Conservative.

As regards policy, the dividing line between British parties is not clear, and often illusory. The Labour party professes to support a comprehensive programme of social reform, but so also does the Conservative party. The Labour party also favours collectivist action in certain directions, while the Conservative party opposes it. Perhaps the clearest line of distinction between the parties is socialist and non-socialist ; but even this is not accurate, for the Conservative party has accepted the socialist policy of nationalising mining royalties. In theory, the Conservative party is opposed to radical change, and supports established institutions like the Crown and Church, but in this their views are shared with other parties. The old Conservative tradition of supporting class privilege and heredity is practically dead ; on the other hand, the Labour party does not favour class war or root and branch abolition of historical privileged bodies like the House of Lords. The same was generally true of the Conservative and Liberal parties. The Conservatives and Liberals vied with each other in their programmes of social reform. In theory, the Liberals had more "advanced" programmes ; in practice, the Conservatives were responsible for putting many of them into action.

The theory of parties in England is well stated by May in his *Constitutional History* : "The parties in which Englishmen have associated have represented cardinal principles of government—authority on the one side, popular rights and privileges on the other. The former principle, pressed to extremes, would tend to absolutism, the latter to a republic ; but, controlled within proper limits, they are both necessary for the safe working of a balanced constitution. When the parties have lost sight of these principles, in pursuit of objects less worthy, they have degenerated into factions."

British Party Organisation.—Party organisation in Britain is now highly developed. Till the middle of last century, most of the organisation was of a parliamentary character. The party leaders, chiefly members of the House of Commons, determined party policy, and the rest of the country was content to accept their programmes. The chief figure in the parliamentary organisation was the Whip, whose function was, and still is, to maintain, or secure, a majority in the Commons. The Whip no longer controls the party orga-

nisations for the reason that the parliamentary side of party organisation has been largely divorced from the election or propaganda part. The parties have separate central offices, which work in close touch with local associations. The parliamentary leaders naturally take a directing part in the work of the central offices, but the chairman of the party organisation—in the case of the Labour party the secretary—has replaced the Whip as the directing head of party programmes and policy.

The central party offices work in conjunction with a network of local associations with whom they are in constant touch. The local associations depend largely upon the work of paid party agents. These agents do most of the electioneering work. The control of the central office over the local organisations is exercised mainly through finance. Local bodies endeavour to finance themselves through local contributions, but they frequently have to obtain subventions from the central organisations. The central office is thus able to direct the choice of candidates throughout the country. The accounts of all the organisations are kept secret, but it is commonly believed that party funds are augmented by those who expect to receive either office or honours when the party is in power. The funds of the Labour party came largely from contributions from affiliated organisations, such as trade unions.

Party activity is kept alive by several other means. Party colleges, with summer schools, research departments, and propaganda services are now common features of party organisation. Much work is also done on the social side, through clubs. The big London social clubs, such as the Carlton (Conservative) and National Liberal, are less important party centres than they once were, but much work is done in working men's clubs and other political clubs of a local character.

2. **The Party System in the United States.**—The party system of the United States, like that in Britain, has passed through various phases. Before the American War of Independence the parties in America were similar to those in England. After the Declaration of Independence, a purely American type grew up. The first line of division was between the Federalists and Anti-federalists. The basis of this division was the form of government. The Federal party desired the establishment of a strong central government; the

Anti-federalists wished to retain state rights. With the adoption of the Constitution, the Anti-federalists were beaten, and disappeared, but their place was taken by the Republicans, who favoured the restriction of the powers of the central government. The Republicans, basing their theories on the general theories of rights which were so popular at the time of the French Revolution, gradually conquered the Federalists, or supporters of centralisation. They called themselves Democratic Republicans and were helped by dissensions among the Federalist leaders and by the passing into law of certain unpopular acts. Coming into power in 1801, the Republicans adopted the most popular of the Federalist doctrines, which led to the extinction of the Federalist party. For some time there were no distinct parties (from about 1816 to 1830)—a period known in American history as the era of good feeling. About 1830 new parties began to arise, one, the Democrats, led by Andrew Jackson, the other, the Whigs, led by Henry Clay. The Democrats, successors of the Democratic Republicans, held extreme individualistic views of the rights of the people, and strongly opposed the protective tariff, the national bank, and national improvements in roads and canals, all of which were supported by the Whigs.

Present Position.—The next party controversy was slavery. This, ending in the American Civil War, split up the Whigs. The holders of anti-slavery opinions came together as Republicans. After the Civil War, and the abolition of slavery, the party basis of slavery was destroyed, but the organisations continued. The present party organisation, though the same in name, is not divided by any clearly marked difference of opinion. The chief element in the system is the party organisation, which is all powerful. It is impossible to say clearly what doctrines a Republican or a Democrat holds. They are divided on questions as they arise. Thus while the Republican party favours protection, the Democrats do not oppose it. The gold standard is favoured chiefly by the Republicans, but also by many of the Democrats. As a matter of practice, each party seizes on the opinion that is likely to be popular, and the only way to distinguish them is by their organisation.

Party Organisation.—The organisation of the American party system is the most thorough-going in the world. Several reasons have contributed to this. Firstly, the separation of

the legislative and executive branches of government, and the difficulty of amending the constitution have necessitated some method of co-ordinating them, both in central and state governments. Secondly, the frequency of elections, the number of elected officials, and the unpopularity of re-election have helped to strengthen party organisation. Thirdly, the dislike by Americans of localism or sectionalism in both federal and state politics has encouraged centralisation in two powerful nation-wide groups. Fourthly, the large area of the United States, as well as the existence of two governments, federal and state, makes it necessary for the expression of the popular will that the machinery of election be highly organised. Fifthly, in America there is no central authority like the cabinet which is representative of the party in power and acts as a focus of party opinion.

The central fact of American party organisation is the convention or meeting of representatives to choose candidates for offices. These representatives are selected by the political parties. The actual working of the system starts at the primary election or caucus. This "primary" is a meeting of the qualified voters in the smallest electoral area. It selects a local party committee, makes nominations for the local offices open to election, and sends delegates to the next highest meeting. In the primary elections only a small number of electors as a rule take part. The main body of citizens stay away either from lack of interest, lack of technical qualifications to attend, or because of unfair means adopted by party leaders.

In the larger electoral areas it is physically impossible for all qualified voters to attend. The business of these areas is therefore done through bodies of delegates, or conventions. The duties of this convention are similar to those of the primary convention. It appoints a committee, nominates party candidates and sends delegates to the state convention, which, in its turn, nominates the party candidates for the state governorship and sends delegates to the national convention.

The national convention is the head of the whole organisation. It is composed of twice as many members for each state as the state has members of Congress. Two delegates are sent from each congregational electoral area, and from each state at large. Each territory sends six delegates. As a rule, reserve members, or "alternates," as they are called. are chosen to replace members falling out. The national con-

vention makes the party nomination for the presidentship and vice-presidentship, and decides matters of policy. The national convention is held once in four years. There are differences in procedure in the two parties. In the Republican party the delegates sent from a state may vote as individuals for different candidates ; in the Democratic the delegates must vote in a body for one person. For election the Republican party requires only a simple majority ; in the Democratic party a two-thirds majority is necessary.

The party system in America, though complete and symmetrical in its organisation, has unfortunately developed many abuses. The frequency of American elections has proved too severe a tax on both the time and interest of the electors, and the elections have passed into the hands of party organisations. Hence have arisen what are known in America as the party "machine," the party "ring," and the "boss." The "boss" is the party leader who manages the election for his own friends or his own particular interests ; the "ring" is composed of his followers who help him in elections and expect to share in the benefits flowing from success in the elections. The "machine" is the party organisation by which the "boss" is able to carry out his purposes. The "boss" is not primarily interested in general political issues. His business is to win elections, and to do so he must be a master of intrigue and persuasion. His chief enemies are those of his own party who try to weaken his power, as, particularly in municipal elections, he can often make a "deal" with the "bosses" of the opposite party to share in the final distribution of offices.

Elections, from the "primaries" upwards, are, accordingly, more or less farcical. The voters, aware of the system, do not attend, and the selection of candidates takes place at the bidding of an inside "clique" which prepares beforehand the names to be adopted (known in America as a "slate"). The very existence of the "machine" system keeps voters away ; they know that their individual votes are of no avail against the machine. In the primary elections only a very small number of the qualified voters take the trouble to attend the meetings.

One of the evil results of the American system is known as the "spoils" system, by which government offices are given to party supporters. The close connection of politics with

industrial and commercial life results also in the evil of what is known as "graft," by which business bodies, by helping "bosses" or party leaders with money, are able to secure legislation favourable to their own interests.

During recent years many methods for the reform of the American system have been proposed. The fundamental difficulty is really the apathy of the electors themselves, but the "machine" is now so perfect that it is questionable even if increased interest in politics by the masses would be able to amend it. Another suggested reform is the abolition of elective administrative posts. For the "spoils" system reform in the civil service is necessary. Some states have drawn up laws to prevent abuse in primary elections. Another method, adopted in the state of Minnesota, is to allow every qualified voter to name his candidate, and, ultimately, by the double-ballot system, to elect the man who has the final majority.

3. **Parties in Continental Europe.**—In continental Europe the multiple-party system used to be the prevailing type, but in the dictatorships this has been replaced by the one-party system, which, as already indicated, is not properly speaking a party system at all. Where the representatives of the people are divided into several parties, the government is carried on by means of coalitions, in which groups of parties unite to secure a majority over other groups. In such coalitions there is usually a broad distinction between two types of political thought, the conservative, or right, and the radical, or left. Coalition government is more unstable than two-party government, because it is more liable to dissension. On the other hand, coalition government is more flexible, because dissolution need not follow defeat. When a coalition is defeated, the ministry has to resign, but it may be replaced by a coalition of other groups, without an appeal to the electorate. Coalition government, as compared with the two-party system, also allows more freedom of thought and action to the groups, and thus may be said to be more amenable to changes in public opinion. On the other hand, it is less effective, because the cabinet has less unity. The main principle on which coalition governments are constructed is compromise, hence there is less likelihood of strong, decisive action.

In multiple-party countries, the lines of party division are determined partly by general political or economic theory, partly by religious sect, and partly by local conditions. In

many cases the dividing lines are not clear, and often the parties are of a temporary character. The leading examples of politico-economic parties are the socialists and communists, but they are usually sub-divided into sub-groups. In France, for example, there are three groups of socialists and two of communists. Peasants' parties, people's parties, agricultural parties and conservative parties are other examples of the same class. The system of government also provides a ground of division. Parties of this type used to be common in France, which had royalist and republican groups ; the royalist party was sub-divided according to the claims of different royal houses. Religious sectarian differences are responsible for many continental parties. The Roman Catholics are often organised in political groups, and in some cases this has led to separate organisations of Protestants. Such sectarian parties are often sub-divided into smaller groups. Local conditions are responsible for such parties as the Flemish Nationalists in Belgium, and the Monarchists in Spain. Personal parties, also, are not uncommon on the continent.

The number of parties in the continental non-dictatorship countries varies considerably. About ten is the normal number in France. In Germany, before the dominance of the Nazis, there were eight. In the smaller countries the number varies from four to six or seven. None of the parties is so well organised as the individual parties in dual party states.

Parties in the Dominions.—The party system has been adopted in all the British Dominions. The two-party system is the prevalent type, though in most cases small minority parties have succeeded in gaining representation on the legislatures. The party divisions are determined mainly by local conditions, but the main groups are conservative, liberal and labour. In Canada, the main parties are Liberals and Conservatives, but they do not represent any clear cut line of political division, such as the interests of agriculture or organised industry. Labour has made little headway in Canada. On the other hand, the Labour party of Australia has for long been a dominant power in Australian politics. The Labour party in Australia is normally well organised, chiefly owing to its close connection with trade unions, but recently it has shown signs of disunion, owing to differences between party leaders. The other parties in Australia are of a conservative character, such as the United Australia Party and the Country

Party, which professes to represent rural interests. In New Zealand, the usual party division is Labour and non-Labour, the parties representing which are of a conservative character, with names which change from time to time. In the Union of South Africa the chief parties are the Nationalists and South African party, the origin of which is to be traced to the racial and political conflicts succeeding the second South African war and the creation of the Union in 1910. Originally these parties represented those who desired a United South Africa—the South Africa Party—and those who desired independence within the British Empire, or secession—the Nationalists. Now both parties are united on the imperial question, and their political programmes are not markedly different.

In India, party organisation has not yet reached a high state of development, except in the case of the Congress party, which is organised on an all India basis, with provincial divisions, and which maintains strict discipline. Other parties, such as liberals, and agricultural parties have been formed, but party alignment is not likely to be clear till the Constitution Act of 1935 has been in force for some time.

CHAPTER XVI

FEDERAL GOVERNMENT

1. THE VARIOUS TYPES OF UNION BETWEEN STATES; INTERNATIONAL ALLIANCES, INTERNATIONAL ADMINISTRATIVE UNIONS, PERSONAL UNIONS, REAL UNIONS

Federalism.—The word federalism is derived from the Latin word *foedus,* which means a treaty or agreement. The essential feature of a modern federal state is that two or more hitherto independent states agree to form a new state. Federal states are a species of a genus, the genus being unions, or states which exist in virtue of some form of governmental union or agreement. Before analysing federalism, it is necessary first to differentiate it from other types of union.

International Alliances.—Union between states varies in completeness from international alliances (such as an agree-

ment between independent states to guarantee certain rights or territory) on the one extreme, to federalism on the other. In the case of international alliances the individual states concerned have to carry out the agreement; there is no organisation to compel any of the states that may fail to fulfil its guarantee. Alliances entail no organisation beyond the governments of the individual states themselves. They are the weakest type of union.

Types of Organised Unions.—Most unions have some sort of organisation definitely marking the union. These organised unions may be divided into (*a*) International Administrative Unions; (*b*) Personal Unions; (*c*) Real Unions; (*d*) Confederations; (*e*) Federations.

International Administrative Unions.—International administrative unions differ from international alliances in having a definite organisation for the carrying out of the purpose for which they are established. Such unions exist only for a definite administrative purpose—such as the management of the Suez Canal by Britain and France, or the joint administration, by the same powers, of certain Pacific islands.

Personal Union.—Personal Union and Real Union (both these terms are taken from the German language) are very much alike. In personal union two distinct states come under one ruler; the states are independent, each having its own constitutional laws and organisation: the only bond of union is the common ruler. Choice, succession or any other casual circumstance may be the cause of personal union. Each state preserves its own identity, sends its own international representatives to other states, and receives theirs. The common ruler may have different functions in the several states of the union. He may be a constitutional ruler in one and absolute in another. He has different personalities for each unit. As soon as the ruler ceases to exist, the personal union ends. In a personal union, therefore, the only bond of union is the person of the ruler, and when it ceases to exist, either by death or by legal extinction, the union ceases. An example of such personal union was the union of England and Hanover from 1714-1837. The Hanoverian Kings of England were at one and the same time Kings of England and of Hanover. This relationship ceased with the accession of Queen Victoria, because the Hanoverian laws did not permit female succession to the throne.

Real Union.—Real Union goes further than Personal Union. In Real Union there is a common ruler but the individual states, while preserving their own constitutional laws and local institutions, create a common authority to secure certain common ends. The states are closely united, and act as one in international matters. The old Austro-Hungarian Union is an example. In Austria-Hungary there were two units—the Austrian Empire and the Kingdom of Hungary. The Emperor of Austria was also the King, or, as he was officially known, the Apostolic King of Hungary. The Compromise of 1867 settled that each state should preserve its institutions, with its own legislature and executive departments. In foreign, military and naval affairs, and in financial matters relating to these common affairs, there were common administrative agencies. With certain small exceptions, the Union had entire control of these subjects, though the executive agency for the assessment and collection of the financial contributions of the units was the individual governments. In commercial matters there was an agreement, renewable at intervals of ten years, by which the two states were practically one in customs, coinage and weights and measures. The legislative power in common matters was vested in the parliaments of the states, but the Delegations, nominated from the Legislative Houses of each state, decided the requirements of the common services. These Delegations were summoned annually by the Emperor and King, and met alternately at the capital of Austria (Vienna), and the capital of Hungary (Buda-Pesth). The three common ministries (Foreign Affairs, War, Finance) were responsible to the Delegations, not to the Austrian and the Hungarian Parliaments.

Another modern example of Real Union was the union, from 1815 to 1905, of Norway and Sweden. This union was not so complete as the union of Austria and Hungary. Foreign affairs were managed by Sweden, not by a separate organisation. Each country preserved its own parliament and flag. There was no joint legislature or joint ministry. The desire for separate foreign representation by Norway led to the disruption of the union in 1905.

CONFEDERATION

Federation and Confederation.—Though the words confederation and federation come from the same root, the two

are distinct in meaning. Confederation both historically and logically is prior to federation; but the latter is the more complete form of union. In a federation states hitherto sovereign lose their statehood, they give up their sovereignty to another state, the federal state. In a confederation union is only partial. Each state preserves its original sovereignty, and only for certain common ends a new organisation is established. The confederate organ of government binds each state with the consent of the state concerned. No new state is formed, though there is a new organ of government. This new government is, as it were, the result of a treaty between independent states, except that the treaty has no definite duration and creates a separate organisation merely to recommend or carry out certain common ends. Any state in a confederation can secede if it wishes. The only restraint is the fear that the other states of the confederation may enforce the original treaty from the idea that they have been endangered by the secession.

In a confederation the central organ of government deals with the individual governments, which it controls only so far as its statutory powers permit. A confederation does not deal with the citizens of the individual states. In a federation, however, a new citizenship is created. The federal government has direct relations with the citizens. In a confederation each citizen is a citizen of his own state; in a federation he is a citizen in a double sense, of a "state" (which is only nominally a state in a federal union) and of *the* state, the federal state. To take a simple example, suppose India were united, in a confederation, there would be a government, at Delhi, which would control Bengal, Bombay, Madras and the other provinces in certain matters agreed upon by all provinces. Yet the provinces would remain independent of each other. A Madrassi would remain a Madrassi, a Bengali a Bengali. Bengal or Madras could secede from the union if either felt that it could no longer consent to it. In the Indian federation, however, Bengal, Madras and Bombay are integrally linked up with the rest of India; there can be no secession. A Madrassi or Bengali, in addition to being a Madrassi or Bengali, is an Indian. Bengal and the other provinces are units in a unity; their provincial autonomy is constitutionally guaranteed, but their

constitutional position is indissolubly bound up with that of the federation.

The distinction between confederations and federations may thus be summed up : first, a federation makes a new state ; a confederation is a union of existing states ; second, a federation has a body of federal law which is the law of the new state. This law represents the will of the federal community. In a confederation there is only a joint government for certain purposes. The continued existence of this government depends on the consent of the states. Third, in a federation a new sovereignty is created. The sovereignty rests in the federation, not in the states, as in a confederation. Fourth, the states, or more correctly, provinces, of a federation, cannot secede, for a federation is perpetual ; in a confederation, the consent of each state being essential to union, secession is possible. Fifth, in a federation a new nation is formed, the central government dealing with both provincial governments and citizens ; in a confederation the common organ of government deals only with state governments.

In the German language the distinction is well brought out by the words *Staatenbund*, meaning union or system of states (confederation), and *Bundestaat*, a unified state (federation). Confederation is a weaker type of union than federation. It often precedes federation ; the conditions leading to confederation may ultimately bring about a stronger form of union. In the modern world the United States, Switzerland and Germany are outstanding instances of federal states, and in each of these federation was preceded by confederation. Confederation, however, often results from a temporary emergency, and experience has proved that as soon as that emergency is past, the confederation may break down. Federalism must rest on something more secure than temporary exigencies.

Examples of Confederation : **in Greece.**—There are many historical instances of confederations. Unions of this type (called "systems," "groups," "joint-states," or "commonwealths") were common amongst the Greeks. In ancient Greece there was a large number of independent cities, and from time to time the needs of defence or the demands of commerce led to leagues or confederations. Certain conditions favourable to union existed in Greece—common language, religion and culture. Every Greek was proud of the fact that

he was a Greek, whether a Spartan, a Corinthian or an Athenian, as distinct from a foreigner, or barbarian, as the Greeks called non-Greeks. In spite of many all-Greek institutions, such as the religious festivals, the Hellenic games, and the Amphictyonic Council, the ancient Greeks never achieved unity. The mountainous nature of the country, the intensely local form of government, whether democratic or oligarchic, and local jealousies, prevented complete fusion. The Boeotian, Delian, Lycian, Achaean and Ætolian Leagues all flourished for some time, but none achieved permanence. The most notable of these was the Achaean League.

The Achaean League.—The Achaean League was the result of the conquest of Greece by Alexander the Great. After Alexander's death, the Macedonian domination over Greece continued, but the ten cities of Achaea, taking advantage of the Macedonian pre-occupation with an invasion by a northern tribe, established their independence. They were soon joined by the whole of Greece, except Sparta and Athens. The government of the Achaean League was organised according to the type prevailing in the cities forming it. There was an assembly of all the citizens, which met half-yearly, and a senate, of 120 members, which was practically a committee of the assembly. The assembly elected magistrates to carry on the work of the League. These magistrates were responsible to the assembly. The citizens in the assembly voted by cities, not by head, each city having equal representation. The chief magistrate, or general was the equivalent of a modern president. The Achaean League was in many respects more like a federation than a confederation. Common laws, magistrates, coins, weights and measures, however, did not prevent disruption. Structurally the League was defective in the equal representation of unequal cities, and in the union of civil and military power in the generalship. The first led to local jealousies, the latter to defeat. Moreover, Athens and Sparta refused to join, and, though the name of the League existed long after the Macedonian yoke was cast off, its actual life ceased with the realisation of the object which gave it being.

The Achaean League was the most thorough-going attempt at federation in the ancient world. The Lycian League, earlier historically than the Achaean, is notable insomuch as, profiting later by the experience of the Achaean, it allowed

proportional representation to the city-states forming it. The Lycian League, it may be noted, attracted the admiration of Montesquieu, and the American, Hamilton, and through their influence was a stimulus to the modern federal movement.

In Rome.—Before the rise of Rome there were in Italy leagues with certain federal characteristics. The chief was the league of the thirty cities of Latium, of which perhaps Rome was one. The rapid rise of Rome, however, prevented any confederations in Italy. Rome, as mistress of Italy, was too strong to join in any equal alliance and strong enough to prevent any union against her. Nevertheless, in the heyday of the Roman Empire certain principles of government were observed which have since been applied with great success in the British Empire. After her military conquests Rome usually tried to incorporate her provinces in the Empire by extending the privileges of Roman citizenship to the conquered peoples. The Roman dominions were allowed a large measure of self-government, as well as the franchise. The latter was a failure because of the physical impossibility of the conquered peoples taking a direct part in Roman elections; and self-government really depended on the whims of the administrative chiefs at Rome. Though neither federalism nor representative government succeeded, Rome almost achieved success in both.

The Middle Ages.—After the fall of Rome, political organisation of all kinds became unstable. With the feudal system, the federal principle again emerged. Feudalism, the essence of which was a social classification based on ownership of land, was in a sense federal. The king was the social head and the vassals were his subordinates. Instead of producing union, this system produced disunion. The greater landlords tended to become independent kings. To the protest by the cities against feudalism, which was essentially a land system, modern federalism owes its birth. Commerce and industry were much hampered by the exactions of territorial magnates, and for long there were severe struggles between the industrial centres and the feudal landlords. Commerce and industry led to the formation of towns, the wealth of which attracted the greedy overlords. Defence, therefore, was the first task of the towns. Several leagues of towns sprang up, notably the Lombard League, the Rhenish League, the famous Hanseatic League and the Cinque Ports in England. These leagues, which

sprang up throughout all western Europe, existed to oppose the rapacity of feudal chiefs. They were primarily commercial, and had common military organisations to guard them. They were not really political unions, and in no case did the union outlive the commercial necessity which caused it.

Switzerland.—In one case, however, the basis was laid for a later confederation and ultimately federation. In 1621 three mountain cantons in the Alps leagued together against the absolutism of the German king and the prevailing feudal lawlessness. The Swiss League gradually developed in strength and organisation till the independence of the cantons was recognised by the Peace of Westphalia in 1648.

The Holy Roman Empire.—The Holy Roman Empire, by a long process of decentralisation gradually became a loose confederation. The emperors were gradually forced to give concessions to the territorial magnates, many of whom ultimately became independent. Till 1806 the Emperor continued to be elected by the Diet of the German Empire, which represented some three hundred states and free cities. The dissolution of this was followed by a new confederation, and later by the federation of the German Empire.

The Netherlands.—One more historical confederation must be noticed, viz., the Netherlands. Though feudalism had a firm hold there, it rapidly decayed with the rise of the towns. The natural industriousness of the people, coupled with a flat country which provided no baronial strongholds, enabled the people early to achieve liberty. This liberty was soon to be infringed by the passing of the Duchy of Burgundy, to which the provinces (roughly Holland and Belgium) owed allegiance, to Spain. The Reformation, which was supported particularly in Holland, led the Spanish kings, Charles and Philip, to adopt severe repressive measures, the result of which was that all the hitherto independent trading republics lost their ancient charters and liberties and were made completely subservient to Spain. Both Catholic and Protestant provinces disliked Spanish interference, and in 1579, by the Union of Utrecht, five provinces united in eternal union to oppose the foreign power. The articles of union show that these provinces all but became a federal union. The provinces decided to defend one another by means of the "generality" of the union. The expenses of common action were to be met by equal levies. Peace and war were to be decided unani-

mously by the provinces, as also was the levy of the federal taxes. On other matters the majority was to decide. The central organ was the States-General, which represented governments, not individuals. No state could make separate treaties with a foreign power without the consent of the others, and any alterations in the articles of union required unanimous consent from the members. The States-General, it must be noted, represented states, not the people, and the votes were by states. No executive corresponding to the States-General was appointed till the Spanish yoke was definitely renounced.

The Dutch confederation lasted only during the Spanish menace. The union never went beyond a union of states : no new nation was formed. The individuals of the states were never affected by the central government. The death of the menace killed the spirit of unity for centuries, and when it was revived, the idea of federalism was lost.

The American Confederation.—The two most notable modern confederations are the United States of America for the few years 1781-1789, and the German confederation from 1815-1866. The American confederation existed for mutual defence. Each state reserved its independence except so far as the common end of defence demanded its surrender. A congress of delegates was formed to make provision for defence, but no common executive or judiciary was instituted. The confederation passed ultimately into what is the chief example of a modern federal state.

The German Confederation.—The German confederation consisted of various types of states, kingdoms, free cities, grand duchies and principalities. The aim of the union was the external and internal security of the states. There was a central Diet, presided over by Austria. This Diet consisted of representatives of the states, who voted according to the instructions received from their own governments. The Diet had supreme control in foreign affairs, though the individual states could make treaties if these treaties did not endanger the union or any state of the union. War and peace alike were matters for the Diet, and machinery was created to settle inter-state disputes. No federal executive was established ; each state acted as the executor of the resolutions of the union.

This confederation, after various vicissitudes, including

severance from Austria, became the federation of the German Empire.

3. FEDERALISM

Definition.—One of the earliest definitions of federalism is in Montesquieu's *Spirit of the Laws,* in which he says that federal government is "a convention by which several similar states agree to become members of a larger one." It is, as Hamilton says, in the *Federalist,* IX (though Hamilton did not draw an accurate distinction between federation and confederation), "an association of states that forms a new one." Federalism tries to reconcile the existence of hitherto independent states with the creation of a new state, to which alone sovereignty belongs; as Dicey says, it is "a political contrivance intended to reconcile national unity with the maintenance of state rights." It represents a compromise between large states and small states; it combines small states which up to the time of union have been independent units, into a larger state. The small states preserve as much local autonomy as is consistent with the object of union. They lose sovereignty, for the sovereignty passes to the new state, and become units of provincial government with definitely guaranteed powers.

Difficulty of the Word "State."—It is unfortunate that the language of ordinary life should so have overcome the more exact language of Political Science that the word state is used for both the united federal state, and the units which compose it. In the United States of America there is, properly speaking, only one state, but Maine, Massachusetts, New York, Ohio, California, etc., are called "states." Scientifically speaking, they are states only by courtesy. It would be more correct to call them provinces (as in Canada and India), as they do not possess the essential characteristic of a state, which is sovereignty. Again in the federal Germany there was only one state, though Prussia, Bavaria, etc., were called "states." In Switzerland the word *canton* is used, a use which prevents confusion. It must also be remembered that the words "federal state" really mean federal government. "Federal" applies to government, not to state. A federal state is not a compound state with divided or dual sovereignty. The state is one and sovereign; the form of government is

federal. Both ordinary and scientific language are inconsistent and it is necessary to keep these caveats in mind.

The Basis of Federalism : (*a*) Geographical Contiguity.—Certain favourable conditions are necessary for the success of a federal union. The first is geographical contiguity. It would be impossible to make a federal system real if the component parts were widely separated by land or sea. Federal government demands that each province should take part not only in its own affairs but in the affairs of the central government. Distance leads to carelessness or callousness on the part of both central and local governments. National unity is difficult to attain where the people are too far apart. Thus, while federalism is possible in Australia, Canada, South Africa or India, it could never be real in the whole British Empire, where London would be the federal centre of countries so far apart as Canada, South Africa, India and New Zealand.

(*b*) **Community of Language, Culture and Interests.**—A second essential is community of language, culture, religion, interests and historical associations. These, it will be remembered, are the usual elements of nationality. The aim of federalism is to produce a unified nation, and complete unity demands that the boundaries of state and nationality coincide. Federalism makes a new state, and the new state, if it is to be successful, must have behind it the national force of the people. In Germany, Prussians, Bavarians, Saxons, etc., became Germans ; in the United States the American nationality co-exists with the local patriotism of the "states." Federalism implies two types of allegiance, a smaller and a greater, and the smaller must never come before the greater. Discordant states, states that do not "pull with" the central government, weaken it. Success in federal union depends on agreement : discordant elements must, therefore, be excluded or won over. There should be opposition of will on the part of neither individuals nor governments to the union. Federal government is most likely to be successful where conditions are favourable to the development of a new nationality, or the resumption of an old one.

(*c*) **A Sentiment of Unity.**—The third essential of federalism, viz., a sentiment of unity, flows from the second. This basis implies a common purpose, a purpose which finds its fulfilment in common political union. The sentiment of unity is the index of a common national mind. The first attempts

at the organisation of such national fellow-feeling may not always be successful, but the likelihood is that in the course of time the various local jealousies will be lost in a common loyalty.

(*d*) **Equality among the Units.**—To prevent local jealousy, as far as possible, there should be equality among the component parts, both between themselves and in relation to outside powers. A "state" markedly larger or more powerful than the others may be too proud and domineering for smaller ones. Because of its strength, it may be selfish or regardless of the interests of the others. This, for example, was true of Prussia in Germany. A strong state may endanger the union by its ability to resume its own foreign relations. For an ideal federal union perfect equality of the states in size and power is desirable. Such exact equality is, of course, impossible. Only a rough equality is attainable. Proportionate representation on the federal organs does not eliminate the jealousy and envy which result from inequality.

(*e*) **Political Ability.**—Fifth, federal government requires a basis of political competence and general education among the people. Because of its structure, it is the most difficult of all systems of government, while the recognition and appreciation of the double allegiance to province and state require a high level of general intelligence among the people.

Federal Decentralisation.—The federal process usually proceeds from the smaller to the greater, i.e., small "states" combine to form a single large state. It is thus usually a process of centralisation. Sometimes the federal form of government is used as an administrative instrument. A large state may sub-divide itself on federal principles to secure more efficient government. This is a process of devolution or decentralisation. Mexico and Brazil are examples of this type. The provinces or states should as far as possible follow historical boundaries. This usually means that the similar racial, or sub-racial, and linguistic elements should be grouped together. In the German federation, the linking up process involved no territorial dislocation and no sacrifice of local patriotism. The kingdoms, grand duchies and other units maintained the integrity of their historical position. Likewise in India, the provincial boundaries of pre-federation days were accepted, with the exception that two new provinces—Sind and Orissa, were created to provide autonomy for certain homo-

geneous groups. In the case of the United States, the boundaries of the states were determined mainly by geographical or administrative convenience.

Essential Elements in Federalism.—In federal government there are three essential elements.

1. The supremacy of the constitution.
2. The demarcation of powers between the central and provincial governments.
3. The existence of a judicial power to decide disputes arising on the first and second heads.

I. The Constitution.—A little consideration will show why these three elements are essential. A federal form of government is a type of contract between certain parties, viz., the "states" or provinces, and the new government. The smaller units agree to form one state, which must be sovereign. At the same time they wish to preserve as much local autonomy as they can. Obviously there must be an agreement defining the positions of the central or new government and that of the provincial governments. This agreement is the constitution. The constitution is not a moral treaty; it is the fundamental expression of the will of the parties forming a new state: it is the basis of the new state. To this new state all provinces and citizens, whatever their former position, have the same relation. The provinces now become units of provincial government with their position guaranteed by the fundamental constitution. The citizens all owe allegiance to the same state: they have a new citizenship.

If the constitution is to be stable it should not be too easy of amendment. We have already seen the distinction between flexible and rigid constitutions. A flexible constitution is one which can be amended by the normal law-making process: a rigid constitution is one in which amendment is possible in a way different from the ordinary law-making process. The nature of a federal constitution is such that it must be rigid. Were the constitution amendable by the normal process of law-making the states whose rights are guaranteed by the constitution would feel insecure: and such insecurity would inevitably prevent the welding process so essential to a successful federal union. If federalism were introduced in the United Kingdom, the old flexibility of the British constitution would have to be surrendered. A new constitution with the rights of England, Scotland and Wales

definitely guaranteed would have to be made, and made in such a way that the ordinary legislature could not alter its guarantees.

2. **Demarcation of Powers.**—The second essential of federal Government, viz., the demarcation of powers between the states and central Government, arises from the first. Theoretically the constitution need go no further than a general delimitation of powers ; actually federal constitutions go into some detail in the matter of the demarcation of subjects and spheres of authority. The more detailed and exact such delimitation is, the more easy is the task of the federal and state governments. The Indian constitution deserves special study in this respect, for not only does it define the federal and provincial spheres in detail, but it enumerates the subjects in respect of which the federal and provincial governments have "concurrent" powers of legislation. The "concurrent" list is subject to the constitutional provision that, if both the federal and provincial governments pass laws on the same subject, the federal law shall prevail.

The Division of Powers.—In the actual division of powers there are certain broad principles common to all federations. The fundamental principle of division is that all subjects essential to the existence of the state should be allocated to the federation and that subjects which are of local interest and can best be administered locally should be under the provincial or "state" governments. The most essential federal subject is defence, hence the naval, military, and air forces must be under federal control. Foreign relations or external affairs must also be dealt with by the federation. The federal government must also have the power to finance its activities, and this implies power of taxation in certain fields, and the management of the federal public debt. Coinage and the currency must also be federal subjects, for obvious reasons. External trade is another subject which involves federal control ; this implies the federal control of import and export duties, maritime shipping (as distinct from inland shipping) and the mercantile marine. Inter-provincial trade in a federation must be free ; that is to say, there can be no inter-provincial tariff barriers. The existence of such barriers would be a grave menace to national unity. The freedom of internal trade is not a matter for federal control but for constitutional guarantee. In the Indian constitution, for example, it is enacted that no

provincial legislature or government may, "(*a*) by virtue of the entry in the provincial legislative list relating to trade and commerce within the Province, or the entry in that list relating to the production, supply, and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or export from, the province of goods of any class or description; or (*b*) by virtue of anything in this Act have power to impose any tax, cess, toll, or due which, as between goods manufactured or produced in the province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality."

It is essential that several other matters of common or national interest should be under federal control, such as emigration and immigration, the postal and telegraphic system, federal railways, and main railway lines. Federal control of communications as a whole is desirable in order to secure inter-provincial co-ordination of policy as between rail, river, road and air traffic, and to ensure the proper alignment of "through" railways and roads. In Australia the provincial control of railways was responsible for a break in the railway gauges in a through line between two of the most important states, Victoria and New South Wales. It is desirable, though theoretically not essential, that the federation should control several other subjects in which national uniformity secures the best ends, such as copyright, patents, trade marks, banking, weights and measures, arms and ammunition, factory legislation, criminal law and procedure, marriage and divorce, and contractual and property rights. Several of these subjects are included in the "concurrent" list in the Government of India Act, 1935.

Types of Federal Union.—With respect to the division of functions, there are three types of constitution, which may be termed American, Canadian and Indian. The criterion of difference between them is the power conferred on the federation. In the American type—that of the United States—the power of the federal government was strictly limited to those subjects which were deemed essential to the existence of a national government. The individual states which formed

the federation were very jealous of their state rights and they would not concede to the centre more than they considered absolutely necessary. Hence the federal government was given certain functions, with such other functions as are implied in these ; the residue was left to the states. In Canada the opposite policy was adopted. The functions of the provinces were defined in the constitution, and the Dominion government was given power to legislate for all other subjects. The American type was favoured when the Australian federation was formed, but the Indian constitution is more akin to the Canadian type. The Indian constitution is, however, unique, not only in its detailed division of federal, provincial and concurrent subjects but also because it confers "residual" powers on the Governor-General. The Governor-General may empower either the federal or a provincial legislature to enact a law with respect to any matter not specifically enumerated in the federal, provincial and concurrent list of subjects. In India also, the federation may legislate on subjects in the provincial list if the legislatures of two or more provinces consider it desirable.

3. **A Federal Judiciary.**—The third essential of a federal constitution is a body to decide disputes. Where there are two governments, provincial and central, each with stated powers, cases of conflict may arise. This not only makes a judicial body necessary but gives that body great power over both the legislature and executive. Thus, if either a state or central legislature passes a law which is not within its powers according to the constitution, that law becomes void because the courts will refuse to apply it in any given case. Such a law is *ultra vires,* or beyond the constitutional powers of the law-making body, and, therefore, is inapplicable.

Federal judicial organisation is not the same in all federal governments. In the United States and the British federations the constitution provides for a federal judicial organ, which is independent of the other branches of government, and of the governments of the states. These courts preserve the constitutional balance between the states and the federation in respect to their constitutional powers. In Canada, the Governor-General has power to disallow a bill as *ultra vires,* but his decision does not affect the right of the Supreme Court to pronounce a law unconstitutional. In Switzerland the courts have no power to question the legality of federal

legislation. The theory underlying this is that the legislature, as the supreme organ of the will of the people, decrees the limits of its own power. The power of the courts on the continent is also affected by the system of administrative law, under which the government decides for itself whether a law is constitutional or not.

Other Points. There is no Ideal Federal System.—Some further points must be noted. In the first place, there is no such thing as a model system of federalism. Experience has proved that this or that element in federal government is good or bad, but in no case can it be said that any given organisation will be successful. (The best type of federal government is that which is best adapted to the people.) Although the general spirit of federalism is the same all the world over, the details must vary according to the type of institutions on which it is super-imposed. When a federal system is established, local institutions should be utilised or adopted wherever possible. To impose new ideas or invent a new political machinery where the indigenous ideas or machinery can be used is to court failure. As far as is consistent with the objects to be attained, federalism should mould old institutions to new ideas without violently breaking with tradition and established custom.

Double Representation.—A secondary characteristic of federal union is double representation. The bicameral principle finds here a natural method of division—one house for the people, one for state governments. The American principle of equality of citizens and equality of states has been widely followed in this respect. Each citizen is equally represented in the citizens' house, the House of Representatives, and each state in the state-house, the Senate. In the German Empire, though the states were not equally represented, there was a rough proportionate equality. In the Indian federation, both in the upper and lower houses, there is a rough proportionate equality as between the provinces, and communities; but in India minorities and interests are also represented.

Advantages of Federalism.—The chief advantage of federalism is that union gives strength: it also gives dignity. To be a member of a great nation like the United States is more dignified than to continue a citizen of an independent Virginia or Texas. The loss of independence by small states is amply compensated by the fuller life and vigour which

membership of a more powerful and richer state gives. Federalism gives this added dignity, but it preserves distinctive local features, and, in many cases, the existing nationality of the provinces. Economically, too, there is a distinct gain. To preserve their dignity, small states must keep up various expensive organs of government, particularly a foreign office. If such small states unite, one foreign representative is sufficient for all. Some of the smaller German states found their foreign relations so costly before the unification of Germany that they shared a representative in foreign courts. Not only is there a saving in expenses of management, but there is also the saving that arises from the abolition of ruinous tariff wars, and the organisation of free inter-state communications. There are many other savings, similar to the savings of large-scale production. Useless duplication is often avoided, though there is the inevitable duplication and delay which a double system of government entails. Then, again, the demarcation of powers between central and state governments makes for efficient government. The citizen can concentrate on local affairs. The central government cannot interfere with the individual beyond its constitutional powers. The individual has more freedom in moulding his own destiny ; his voice in his own state is more powerful than it could be in the state as a whole, for the population is less and he counts for more. In the everyday matters of life he is concerned mainly with his own state or province. At certain times he is called on to give his vote in national matters, but his more intimate relations are with his local or state government.

Disadvantages : Particular Defects.—Critics of federal government have pointed out many weaknesses. Particular forms of federalism have particular weaknesses. In the United States, for example, most citizens would prefer to see the regulation of marriage and divorce given to the federal government. Weaknesses of this kind are remediable by amendment of the constitution.

Inherent Defects.—There are, however, certain defects arising out of the very nature of federalism. They are three in number :—

(*a*) Weakness arising from a double system of government.

(*b*) Weakness arising from the fear of secession.

(c) Weakness arising from the fear of combinations of states.

(a) **Double System of Government.**—The expense of a double system, and the delay, irritation and trouble caused by two authorities come under the first heading. Promptness in public business as a rule is more easily attained in a unitary government. In a well drawn up constitution, however, the powers of the central and state governments are clearly defined. In matters of extreme urgency, such as war and peace, a federal government can act as promptly as a unitary government. A badly drafted or badly conceived federal constitution may lead to delay, but that is not the fault of the federal principle in itself. This weakness is often much exaggerated. The experience of both Germany and the United States in the Great War shows that promptness in action was even more easily attainable in a federal than in a unitary government. Not only so, but the other side of the question has to be taken into account—the saving effected by the absence of needless duplication of services.

(b) **Fear of Secession.**—The second weakness, fear of secession, always exists in federalism, though against this must be set the strength achieved by union. Secession is much easier in a federal state than in a unitary state. Each state has its own government ready made and a federal government would probably offer less resistance to secession than a unitary government. This, however, is more a theoretical than an actual weakness, for a recalcitrant state has to reckon with the other states. The southern states of America had to be forced by a war to remain in the union. But a state which wishes to secede shows that it is not comfortable in its surroundings. It should, therefore, be allowed to go, otherwise it may be a centre for the spread of disease. Secession may thus prove useful in national unification, and a desire for separation may show that the constitutional girdle does not fit. It may show the necessity of amendment in the constitution, and constitutional amendment arising from such a cause may be very beneficial to the union. No federal union can be successful if not founded on the common will. Theoretically a federal union is perpetual, but it would be a mistake for a union to keep by force in its membership a chafing and troublesome unit.

(c) **Fear of Combination.**—The third weakness is really

an aspect of the second. A combination of states may force others to act as they wish. The combination in itself is based on the principle of union. Danger of revolt is a sign of maladjustment of areas, peoples, or governments, and demands either a re-arrangement of states or an amendment of the constitution.

Future of Federalism.—Some writers hold that federalism is only a transient form of government. It will be replaced, they say, by unitary government, either by further unification or by separation. Sidgwick, for example, says that "federalism is likely to be, in many cases, a transitional stage through which a society—or an aggregate of societies—passes on its way to completer union, since, as time goes on, and mutual intercourse grows, the narrower patriotic sentiments that were originally a bar to full political union tend to diminish, while the inconvenience of a diversity of laws is more likely to be felt especially in a continuous territory." Sidgwick's theory has been proved in Germany where the Nazi government has converted the German federation into a unified form of government, but the special circumstances of the German instance are not an index for future guidance. Unitary government is essential for dictatorships, but dictatorships, it may be assumed, are not a permanent feature of political life. Modern opinion, even in ordered federal countries, does favour the centre more than the provinces; in other words, the Canadian type of constitution is preferred to the American. There are several reasons for this. One is the growing complexity of social organisation, and the corresponding need for co-ordination of policy over as wide a territorial area as possible. Another is the more intensive activity of modern government, whether as a co-ordinating or initiating authority, or as an actual business organ, e.g. in the ownership and conduct of transport enterprises. A third reason is the inter-connection of nations through the League of Nations and other channels, from which arises a need for the enforcement of international obligations. Federal governments sometimes find it difficult to fulfil such obligations because they are opposed by provinces.

There can be little doubt that, in national crisis, federal government functions most successfully where it assumes the virtues of unitary government—efficiency and despatch. On such occasions, the people are impatient of the formalities and

delays of legislation, and are as a rule content to give the national government "its head." In normal times, the efficiency of federal government depends largely on the care and foresight with which the constitution has been drafted, but from the nature of the case, the government is more complicated than unitary. On the other hand, if the process of amendment to the constitution is not too difficult, a federal constitution can adapt itself to changes like any other constitution. With regard to separation, modern experience has proved this fear illusory. The separatist movement in America, the cause of the American Civil War, is dead. Nor is there any real danger of separation in Canada and the Commonwealth of Australia, where British Columbia and Western Australia have at different times chafed under the federal shackles. Unity in both cases is the paramount factor. Federalism is definitely established in the modern world not as a transitional stage from one form of government to another, but as a substantive instrument of national unity.

CHAPTER XVII

LOCAL GOVERNMENT

General Considerations.—Most modern states cover a large area, and the administration of the law requires not only a staff of officials appointed and controlled by government but also numerous local administrative agencies with staffs of their own. In every state the work of government is concentrated in the "capital," or "seat" of the government in which the legislature meets and from which the heads of the executive, with the secretariats, direct the administration. Administration however requires decentralisation. The secretariat staffs cannot attend to details; they are concerned more with general principles, such as the framing of rules and regulations under laws passed by the legislature, and with the formulation of broad lines of policy. The actual enforcement of law, and the carrying out of policy, has to be done by officials or agencies posted, or grouped throughout the country. Decentralisation of administration may be of two kinds,

direct and indirect. Of direct decentralisation India provides the best example in the world. The laws are made in Delhi and the provincial capitals, in each of which is a secretariat, composed of officials who work directly under the executive heads of the government. The actual details of administration however are carried out by officials of the government posted throughout the country. The federal government, for example, has customs and mercantile marine officers in the ports, and the provincial governments employ officials, arranged in "services," in different administrative areas, such as districts and subdivisions. The officials, arranged in a hierarchical system, work under the direct control of the government departments.

Meaning of Local Government.—It is not to such officials, however, that the term local government applies. Local government involves indirect decentralisation. As Sidgwick says, the term "local government" in a unitary state means organs which, though completely subordinate to the central legislature, are independent of the central executive in appointment, and, to some extent, in their decisions, and, exercise a partially independent control over certain parts of public finance. Local administration by officials of the central government does not constitute "local government." The term is applied to those organs which exist at the will of the central government, and which, while they exist, have certain definite powers of making regulations, of controlling certain parts of public finance, and of executing their own laws, or the laws of the central legislature, over a given area. These organs are essentially subordinate bodies, but they have independence of action within certain stated limits. They represent a subdivision of the functions of government for the purpose of efficient administration. Part of the administration, as it were, is parcelled out to bodies, each of which has its own area of operation.

It is impossible to give an exact definition of local government. It can be described, but not defined, for a definition requires limits, and local government and central government cannot always be clearly demarcated. It is more easy to say what local government is *not* than what it is. It is *not* local officials of the central government. Nor, again, can a government like that of Bengal be said to be a "local government" in the strict sense of the term. The units of a federal

state are not units of local government. They are provinces in a federal union, with local governments of their own. In a sense they are local governments, for they are subordinate law-making bodies with powers over a definite area. But while organs of local government exist at the will of the central government, federal provinces have a position definitely guaranteed by the constitution of the state, which cannot be altered at the will of the central government. This distinction, indeed, is a useful one, but not universally applicable, for in some American states, organs which usually would be designated organs of local government are definitely provided for in the constitution. And there is no reason whatever why a state, in drawing up a new constitution, should not give in detail the constitution of bodies which admittedly might be organs of local government. This distinction of constitutional position is therefore not a universal criterion.

Neither the size of territory nor the number of population is of the slightest value in determining what local government is. The independent state of Monaco, with eight square miles of territory, is far smaller than the local area of Yorkshire in England, and its population of about 23,000 is as nothing compared with the hundreds of thousands which come under the London County Council or Calcutta municipality. The only real point of differentiation between local and central is the kind of work done.

Distinguishing Characteristics of Local Government: Kinds of Functions.—A survey of the various activities of government shows two broad classes of work. In the first class are activities of general interest. It is in the general interest that the central government should conduct foreign relations, and administer subjects like defence, tariffs, coinage, and the postal system. These are matters of national importance. It is also in the general interest that the central government should regulate such subjects as criminal law and jurisdiction, contracts, marriage and divorce. If such matters were left to local bodies, the law and practice concerning them would become a hopeless medley. There is a second class of functions which benefit only a section of the community, and this section of the community may properly be regarded as responsible for them. The lighting or water-supply of a town, and the upkeep of certain roads and bridges

are definitely local matters. The citizens of Bombay, for example, are not concerned with how the city of Calcutta receives its light or water, nor are the citizens of Calcutta concerned with the building of a culvert over a Krishnagar drain. In such cases the benefit resulting from the works is assignable definitely to the people of the area concerned.

Between these two types of functions, however, there is another, and a very large class, which is partly of the first and partly of the second type. Take an example. Suppose that the educational system of Krishnagar were placed under the control of the local municipality, and that the same powers were given to all the other municipalities in Bengal, about a hundred and twenty in number, what might result ? Some municipalities, such as Calcutta, with its big financial resources, could afford a sound scheme of education. Others might have only second rate schemes, and quite a number of the smaller towns, with only a few thousand inhabitants and very limited means, could afford little or no education. It is, however, a matter of general interest that the people be educated, and that they be educated on the same general plan. The central government, therefore, must assume control, though it may leave the municipalities or other local bodies to raise money, or spend grants given by the central government, according to rules and regulations approved by it.

An even more telling instance is public health. If there were no central control, then all the good done by an efficient local body might be undone by an inefficient neighbour. If, for example, bubonic plague were exterminated from Nadia by the efforts of the local District Board, and an inefficient District Board in Burdwan took no steps to exterminate it, the good results secured by the Nadia Board would be neutralised by the carelessness of the Burdwan Board. Central control is essential to secure uniformity, though the actual executive work may be done by the local government bodies. In such matters the organ representing the smaller area may manage the practical details, but the determination of principles and general supervision must lie with the government of the larger area, i.e., the central government.

Local Self-Government.—Local government implies decentralisation and devolution of function, but the powers, functions and constitution of local bodies are fixed by statute.

Within the limits so fixed, they are independent. The central government usually maintains expert staffs, such as public health officers and education inspectors, to advise them, but these officers are not under the control of the local bodies. Local officials of govèrnment are not local government officials. Some writers, it is true, use the term local government in the wider sense of "state" government in a federation, or local administration by government officials. This is not correct, and probably it would be better if we followed the Indian practice of calling local government by the name "local self-government." The Indian term gives a clear indication of the essential difference between government by local statutory bodies and government at the centre, whether the centre be a national unitary government or the government of the unit in a federation. In a federation, it should be added, local government, or local self-government, is always a provincial or "state" subject.

Reasons for Local Government. 1. **Efficiency.**—The reasons for the existence, and the benefits of local government are many. Firstly, local government is necessary for efficiency. In an area where the people are most interested in certain acts of government, it is in the interests of the people to have these acts performed efficiently. For such efficient performance the people should be able to control those responsible for the work by being able to censure or dismiss them.

2. **Economy.**—Secondly, economy is secured by local government. If certain acts of government benefit only a definite area, obviously the expense of these acts should be borne by that locality. Sometimes it may be necessary for the central government to give grants, on certain conditions; or the central government may grant power to a local body to raise a loan for certain specific purposes; or it may have to set a limit to which the local body can tax the residents in its area. Taxation, or rating, is the chief method of raising money in local areas. The people who pay rates elect local boards or councils and thus largely control expenditure as well as management.

3. **As an Educative Agency.**—Thirdly, local government is an important educative agency in modern representative government. In normal modern states the citizen is called upon only occasionally to take a personal part in the direction of national affairs, usually to record a vote at intervals of

three to five years. This may lead either to apathy or discontent; but local government provides an actual representative system close at hand on the proper conduct of which the ordinary things of everyday life depend. The citizen thus becomes acquainted with public affairs. 'Local bodies provide an excellent school of training for the wider affairs of central government.

4. **Distribution of the Work of Government.**—Fourthly, local government takes the burden of work off the central government. Were there no local governmental bodies, the central government would have to do everything through its own officials. By local government the burden is distributed. Financial responsibility is also spread out. Were all functions to be administered by the central government, that government would have to provide the ways and means. Local bodies have their own powers of taxation, and their annual budgets.

5. **As Deliberative Organs.**—Fifthly, local governing bodies are useful as members of the "deliberative" organ of government. They give advice on proposed legislation, and for making known local conditions and difficulties they are invaluable.

Demarcation of Powers and Areas.—It must be remembered that local bodies exist within definite limits laid down by the central government. They may have full powers in some matters, but in others they may only have to carry out the orders of the central government. Local self-government must be circumscribed, for, in the first place, the narrower the area of government, the greater is the chance of one powerful interest swamping all others. In such cases the central government must step in, either as a vetoing power, or as regulating the local voting system so that all interests may be fairly represented. In the second place, many functions must be centrally controlled, though local bodies may have large executive powers. Education and sanitation are cases in point.

The Difficulty of Demarcation.—It is a matter of the greatest difficulty for both political scientists and practical administrators to demarcate where central control should end and local control should start. The same difficulty exists in the apportionment of functions between smaller and larger units of local government. In some cases it is advisable to

have central control with its uniformity; in other cases local control is both fair and economical. Were all local bodies of the same standard, the apportionment of functions would be easier; but the central government is continually faced with the difficulty that local bodies are not equally efficient. This is often due to inequality in the size and resources of local bodies. In Bengal, for example, the population of municipalities varies from about 2,000 to over a million. The minimum pre-requisites for an area desiring to have municipal status are (*a*) that three-fourths of the adult male population are chiefly employed in pursuits other than agriculture; (*b*) that the area contains at least 3,000 inhabitants; and (*c*) that there is an average of 1,000 inhabitants per square mile. With changes in population, the population of municipalities may drop below the minimum but municipal status is not revoked unless on petition from the inhabitants. However excellent their public spirit, the smaller municipalities cannot be expected to maintain the same services as the larger.

Examples.—One or two examples of such difficulties may be given. In a municipality, the management of street lighting and paving is a matter for the inhabitants of the town. Visitors and others benefit by good roads and a good lighting system, yet the actual townspeople are the chief beneficiaries. Though this is true generally, there are cases where inhabitants of areas outside the town benefit more than the townspeople themselves. Between the great commercial centres of Liverpool and Manchester there are smaller towns, the streets of which are largely highways for the traffic of the greater. The traffic passes through the towns without conferring any specific benefit upon them, yet the townspeople have to pay for the upkeep of the streets. Or suppose that there are five main roads leading into a town, and these five roads pass through rural areas, each with a different body for local government. The inhabitants of these areas benefit far less from the roads than the town itself or the inhabitants of remoter areas. The cost of the upkeep of such roads, therefore, must be apportioned by an authority wider than that of the district immediately surrounding the town. The most difficult case of all is poor-relief. At first sight it may seem that each local area should be responsible for its own poor-relief. Poor-relief, however, means local taxation, and it would be in the interest of any area to make

the taxation as small as possible in order to make the poor emigrate to other areas. The more public-spirited areas would suffer, and, therefore, some common control is necessary to give uniformity and prevent such unfairness. Central control should be as slight as possible; to place a large part of the burden on the local areas not only stimulates them to take steps to avoid pauperism but has the additional advantage of enlisting the co-operation of private charity.

Responsibility and Public Service.—Experience shows that the greater the responsibility of a local body, the more likely it is that a better class of men will come forward to serve the community. Where a local body merely interprets and executes the will of the central government, it is difficult to secure public-spirited men of the proper type. To give too much power to a body of less able men might cause the educative value of the experiments to be lost in bad results.

Experience as Guide.—Experience is the only sure guide in matters of local government, both in the apportionment of functions and in the delimitation of areas. As a rule central control is necessary at the outset, for the central government has more ability and more experience at its command than any local body. As Sidgwick points out, "the central government has the superior enlightenment derived from greater general knowledge, wider experience and more highly trained intellects." Gradually decentralisation is possible to the limit where central and local requirements meet. For the decision of such a limit experience and the prevailing ideas of the day on governmental interference decide. No rule of thumb exists.

Legislative Decentralisation.—The above general considerations help us to answer the question, "How far can legislation be decentralised or localised?" When we speak of local government we usually have administrative work in mind, but local bodies have also varying powers of legislation. All such is subordinate legislation, for all local bodies are subordinate to the central government. Their laws are really only bye-laws. In this respect they are comparable to provincial governments in a federal system. They have their constitutions which define their powers. They can make laws within limits, and anything done beyond these limits is *ultra vires,* or beyond their powers, and therefore void. The point of difference is that, whereas the provincial governments of a federal state are guaranteed by a fundamental constitution unalterable by

the ordinary process of legislation, local bodies exist at the will of the central legislature.

Types of Local Control.—The extent of powers granted depends on several factors—the nature of the subjects, the political ideas prevalent in the country, and historical conditions. Generally speaking, there are three methods of control :—

1. Legislative centralisation with administrative decentralisation, in which, for the sake of uniformity, the central government passes laws, leaving the local bodies to administer them. In such a case the local bodies have certain powers of making bye-laws, which are really administrative rules. This system prevails generally in England and the United States, but, in certain types of activities, it may co-exist with complete centralisation, both legislative and administrative.

2. Legislative decentralisation and administrative centralisation, in which large powers of legislation are given to local bodies, but the central government administers these laws through its own officials. This system prevails in France.

3. Part centralisation and part decentralisation in both the legislative and the administrative branches of government. This is a compromise between the first two types. The old Prussian system is an example, and there is a marked tendency in England and the United States to follow in this direction.

It must be observed, however, that the central government is always in the background even although the powers it exerts are merely nominal, as in the case of provisional orders in the British legislature. A body like the London County Council requires only nominal control, but in cases where local interests conflict, the central government is the only court of appeal. The central government preserves the legal power to forbid any proposed legislation of the London County Council, save where final powers are legally granted to that body. Such ultimate control of local bodies is necessary for two important reasons : first, the lack of statesmanship in local bodies. Naturally a parliament has more brains than a parish council, or, to give a local instance, a Legislative Assembly has greater ability than a union board. Second, small areas tend to become the centres of factions or interests, and the central government must act as a moderating power. It must either provide means to secure the

representation of minorities on local councils, or hear the protests of minorities against the decision of majorities.

Local Areas.—Areas of local government vary from country to country. In England there are parishes, districts, counties; in France, communes, cantons, arrondissements, departments; in the United States, townships and counties; in India, districts, subdivisions, and unions. There is no rule for the demarcation of the boundaries of units of local governments. Several factors may be enumerated. (1) Historical conditions. Each locality should be as homogeneous as possible, therefore local traditions should be respected wherever possible. Organic unity is easier where historic unity exists. In Britain the limits of counties and parishes were really determined long before the modern system of local government was introduced. Natural areas were accepted, or only slightly modified, for the purposes of local government. (2) Geographical conditions. Often areas are marked off definitely by rivers or mountains. (3) Density of population. This applies particularly in the case of cities. Two opposite ideas must be reconciled in this respect. The smaller an area, the more is each citizen interested in it, and, therefore, the more active a member of the community. Small areas are thus the best schools of citizenship. But these have not the same command of able men as large areas, and they are more liable to be controlled by local interests or factions. (4) Character of the population. In rural areas the population is mainly agricultural, in municipal areas, it is non-agricultural. (5) Functions. Functions may be arranged in an ascending scale of importance. The least important duties are given to the local bodies of the smallest areas; i.e., the bodies with the more circumscribed powers; the more important are given to the bodies of larger areas. The extent to which the functions are controlled by the central government depends largely on the type of body to which local control is given. Where such bodies are capable of bearing large powers and responsibilities, the central government usually is ready to give them large powers. It may also be noted that the local bodies of a larger area frequently have considerable powers of control over local bodies of smaller areas, or sub-areas, within its own jurisdiction. (6) Deliberate creation by the central government. This is easily adopted in a new country; but, as in France, it may be adopted as a solution to historical difficulties. These

bases by no means coincide. Though the parish is the unit in English local government because of its history, the density of the population varies from less than ten inhabitants to nearly 350,000. In France the commune, an historical unit, co-exists with the canton, which is the result of deliberate creation.

CHAPTER XVIII

THE GOVERNMENT OF DEPENDENCIES

1. DEPENDENCIES AND COLONIES

Meaning of Dependency.—A dependency is a country with a subordinate government, or, in John Stuart Mill's more lengthy definition, dependencies are "outlying territories of some size and population, which are subject more or less to acts of sovereign power on the part of the paramount country, without being equally represented (if represented at all) in its legislature." Independent states are sovereign; they own allegiance to no other state. In a dependency, there is no such sovereignty. The government in a dependency owes its existence to some superior government. The degree of subordination may vary; but in every case there is subordination. It may be more or less nominal; it may be real.

Meaning of Colony.—Dependencies are usually divided broadly into two groups, dependencies which are ruled or controlled and dependencies which are "settled." The first class comprises those lands which either are unsuitable for settlement because of climate or are already thickly peopled. The second class includes the so-called "new" countries or colonies, which have room for immigrants and scope for development, as well as an auspicious climate and fertile soil. The Latin word *colonia* originally meant a settlement for soldiers in some outlying province. Now-a-days the word colony is often used loosely to include all dependencies. India is sometimes called a colony. This use of the word is quite wrong. Colony is a species of the genus dependency. All colonies are dependencies, but only some dependencies are colonies. A colony,

properly speaking, is an area in which the ruling section of the inhabitants, or their forefathers, migrated from a parent country. The original Roman idea of settlement is essential to the word in its strict sense. The actual settlement may have taken place many years ago, or it may have been a process lasting over centuries; usually there is a tendency towards continued settlement from the same parent country. The parent country also is responsible for the government of the colony; there is always some constitutional relationship, which may vary from direct control to nominal sovereignty. There is also a sentimental bond of union, which arises from community of language and traditions. The terms "mother country" or "old country" are often applied to the parent country by colonists.

English Official Use.—In English official phraseology the word colony has come to mean almost the opposite of what it should mean. The dependencies now officially designated colonies are not of a colonial nature at all. The real English colonies are now called Dominions. The Dominions are defined by statute as "the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.' With the exception of the Irish Free State, all these countries were originally "settled" by emigrants from the United Kingdom. In the course of time, with the growth of population and resources, they were able to stand on their own feet. The word colony came to be resented as indicating immaturity and political subservience, and it was replaced for official purposes by other terms. Till the Statute of Westminster was passed in 1931, they were known as the Self-Governing Dominions; now they are simply Dominions. The word colony is used to cover several types of dependencies administered by the Secretary of State for the Colonies. Few of these dependencies are in the strict sense colonies, as they have not been "settled" by colonists. The criterion of difference is the manner in which they are administered. Dominions are under the Dominions Office; colonies are under the Colonial Office.

"Dependency."—The student must accordingly keep in mind the distinction between colony in its original and literal sense, and its use in current English official phraseology. Likewise, he must realise that the generic word "dependency"

is now more a survival than a reality. The Dominions are not now in any sense dependencies ; were such a word permissible it would be more proper to call them "independencies," for, by the Statute of Westminster, they now are, in effect, as independent as the United Kingdom itself. They are independent units in the British Commonwealth of Nations. The degree of dependency of the other units in the Empire varies with the state of the people's development or the purpose for which the unit is maintained, but in all cases there is some definite constitutional administrative bond of union. For purposes of convenience the word dependency is used to cover all territories in the Empire, outside the United Kingdom itself, for the reason that no other suitable term is available. The old word "possession" has been discarded ; at no time did it represent the relationship between the parent country and the units of which she assumed control. "Colony," as we have just seen, is unsuitable as a generic description. "Territories" is also unsuitable as this word has come to have a specialised meaning in connection with certain undeveloped areas in the Dominions.

"Dominion."—A further distinction has to be observed. Dominion, with a capital D, is different from dominion, with a small d. The former, Dominion, applies only to those dependencies which are defined as such in the Statute of Westminster ; the latter, dominion, is a generic term applicable to all dependencies : it is practically synonymous with dependencies. Were it not for the narrow technical meaning of Dominion, possibly dominion would be a more acceptable term than dependency. The double meaning of dominion is well illustrated in the definition of the term British Empire in the British Import Duties Act, 1932—the only formal definition that occurs in British law :—"His Majesty's dominions outside the United Kingdom, including all parts of India, territories under His Majesty's protection, territories in respect of which a mandate of the League of Nations is being exercised by the government of a Dominion within the meaning of the Statute of Westminster, 1931, and any territory in respect of which a mandate of the League of Nations is being exercised by the Government of the United Kingdom." This definition, with the inclusion of the United Kingdom itself, covers the whole British Empire.

2. METHODS OF ACQUIRING DEPENDENCIES

Methods of Acquiring Dependencies. 1. Conquest and Partial Settlement.—The earliest method of acquiring dependencies was conquest, accompanied by partial settlement. Roman colonies were of this type. When they were first conquered by Rome, dependent governments were established, but only sometimes was there permanent settlement. In this way Spain, by conquering Mexico and Peru, embarked on her colonial career in America.

2. **Cession.**—Sometimes dependencies are acquired as a secondary result of conquest. A country defeated in war in one part of the world may cede an outlying dependency as the price of peace. Canada was ceded by France to Britain in 1763, and as a result of the Spanish-American War in 1899 the Philippine Islands were ceded by Spain to the United States. Several of the smaller dependencies of Britain are due to the process of barter in peace treaties. Conquest and cession often go together. Mauritius, conquered in 1810, was ceded to Britain by the Treaty of Paris in 1814. Hongkong was ceded by China in 1841, Newfoundland by France in 1713.

3. **Purchase or Leasing.**—Dependencies are sometimes bought or leased. The United States bought Louisiana from France and Alaska from Russia. Weihaiwei was leased to Britain by China from 1898 to 1930. The chief reasons for the purchase or lease of territories are geographical, as in the case of Louisiana, which now is a state in the federation, commercial, as in the case of Alaska, and strategical, as in the case of Weihaiwei.

4. **Settlement: Causes of Settlement. (*a*) Discovery.**—In the case of colonies in the literal sense, settlement or occupation by permanent residence is the essential factor. Settlement arises from a variety of reasons. Sometimes it is through discovery of land hitherto unknown to the civilised world. The discoverer claims the territory for his own country. The Portuguese, Dutch and English colonies of the fifteenth to the seventeenth centuries were founded in this way. Priority of discovery is still regarded as a valid claim for new land, as in the case of the Arctic and Antarctic, though for climatic reasons it is not followed by settlement.

(*b*) **Missionary Enterprise.**—Besides adventure and discovery, missionary enterprise has been a valuable factor in

discovering and opening up new countries. Missionary enterprise first led the Portuguese to become discoverers and colonisers.

(*c*) **Political and Economic Causes.**—The chief impetus to colonisation is economic; this implies that the home country is highly developed, that competition is keen, and that conditions of life are becoming more difficult. Political reasons often co-operate with economic. The first exodus from England to America was due to religio-political causes. Before the Great War many from the oppressed nationalities of Europe went to America. These economic or politico-economic forces arising from great density of population and ever-growing competition, incite people to emigrate to lands where the chances are greater and the conditions of life more hopeful. Life in these new circumstances often leads to the greatest hardship in the opening stages, and only the hardy, both in body and character, succeed. Where capital is available for the start, conditions are easier, but the most essential capital for the settler or colonist is vigour of mind and body.

An economic reason of another kind is the discovery of precious metals. The various "rushes"—Klondyke (in North-West America), the Australian gold fields, the South African diamond fields—all these led to settlement, though many who took part in the "rushes" made money quickly and returned to their own land.

Then, again, there is the impetus that arises from the desire of traders to open new areas of activity. Competition at home may be so keen as to make returns on capital small. Goods are therefore "pushed" in new areas, and the expansion of capital in this way leads to the influx of people to use the capital or develop it.

For successful colonisation the mother country must give protection to colonists. The rude tribes of the new country may be troublesome, or the envious eyes of other nations may endanger the new gains. Military and naval vigilance is necessary for security to the colonists personally and to their trade. Successful colonisation needs also adaptability, both physical and mental. Physical adaptability is required for new climate and conditions, and mental adaptability for the types and manners of people to be met in new countries. This has been the secret largely of British success. The adaptability has meant not only the import of capital and

labour to new countries, but the establishing among natives of a new type of civilisation.

3. SURVEY OF COLONIAL POLICY

Phoenician Colonies.—The first historical attempts at colonisation were made by the Phœnicians. They were a hardy maritime people who founded many commercial stations on the shores of the Mediterranean sea. These stations, however, were more than mere trading ports. In some places, notably Carthage, the Phœnicians formed permanent agricultural settlements, but of more importance was the spread of eastern civilisation under the Phœnician aupsices among the rude peoples of the west. The Phœnicians achieved their expansion in a peaceable way.

Greek.—Greek colonisation started about 1000 B.C., when a large number of the inhabitants of the Peloponnesus left Greece after the Dorian invasion. Later invasions and internal strife led to further emigration. The Greek colonies, however, were quite different from our modern colonies, insomuch as the colonies, or cities, did not acknowledge any superior government. These so-called colonial cities of Greece were almost literal copies of Athens and Sparta. They had the same type of government, the same religion and customs, the same attitude towards outsiders, or "barbarians." Though owning no political allegiance to another state, these colonies by religion, language, customs and traditions were united to Greece. But in no case did these colonies become subordinate to the parent city, even though Athens received tribute from some of her colonies for naval aid. Leagues were made with other colonies or the mother city for mutual defence, but these did not involve any sacrifice of sovereignty.

Roman.—The Romans were conquerors, and conquest often led to colonisation. The Roman imperial theory of government was to give the conquered provinces as much home rule as was consistent with the supremacy of Rome. Roman officials were spread all over the world, and in many cases settled in the land where they administered laws. Wherever Romans went they took with them their civilisation, and their chief contribution to the world was not the settlement of individuals in any definite areas, but the spread of western civilisation. The word "colony" (Latin, *colonia*) had a meaning peculiar to the Romans. It meant a settlement of soldiers on a definite

area similar to the proposed settlement of soldiers, after the Great War, in Canada and Australia. After long and meritorious services, these soldiers were rewarded by the Roman government with grants of land where they and their families settled. The modern state of Rumania is descended from a "colony" of this kind.

Modern Discovery of Sea Routes.—In the middle ages there was no real colonisation, though with the numberless wars waged there was much acquisition of dependencies. Modern colonisation really begins with the discovery of the sea-routes to the East Indies and America. In this the Spanish and Portuguese were the leaders. The discovery of these routes was due partly to adventurous seamen, partly to the desire to propagate Christianity, and partly to commercial ambition. The Portuguese gradually worked their way to the Cape of Good Hope, India, the East Indies, China and Japan, and started trading centres at different parts. They also founded plantations in Brazil. The Spaniards, after the discovery of America, directed their attention to the West Indies, Mexico and Central America. In 1493 the Pope, Alexander VI., divided the pagan world between Spain and Portugal. Spain was given the New World, Portugal the Old. Later, by treaty, the Portuguese obtained Brazil and Labrador in the New World. The Spaniards vigorously followed up the papal grant by armed force, so that at the end of the sixteenth century, the New World, from South America to Mexico, was in Spanish hands.

Spanish Colonial Policy.—Great as was the extent of the Spanish colonies in the seventeenth and eighteenth centuries, her policy towards them resulted in complete alienation, and when Spain was occupied with the Napoleonic wars, the colonies seized the opportunity to declare their independence. Spanish colonial policy may be summed up in one word—centralisation. The colonies were ruled from Madrid. There the colonial laws were made, and there the officials were appointed. Trade, commerce, religion and laws regarding the treatment of natives were all centred in the home government. Trade in particular was regulated in the interests of Spaniards. The colonies were allowed to trade with Spain only. This policy had an evil effect on both Spain and the colonies. It alienated the sympathies of the former, and, by bringing great wealth into Spain, led to luxury, profligacy

and corruption among the higher classes. The liberal principles adopted by Britain after the American War of Independence were recognised in the eighteenth century by Spain, but by that date the energies of the country had been totally sapped. The existence of huge vested interests in the old system prevented the new system from appealing to them. The more virile peoples of France and Britain outstripped Spain not only in their means of communication but also in their adaptability, and when Spain was fighting against France and Britain in the Napoleonic wars, the colonies slipped from her grasp.

French, Dutch, English.—During the period of Spain's prosperity three other European countries entered the arena of colonial enterprise, Holland, France and England. These were maritime peoples, whose more adventurous spirits discovered new sea routes and countries. During Elizabethan times England was prolific in daring seamen, who received encouragement from government, not only for the discovery of new lands but for harassing the French and Spaniards. The main period of Dutch and English colonisation belongs to the succeeding century—the seventeenth. In Holland, the Dutch East India Company, which received its charter in 1602, had the monopoly of trade in the East Indies. Their impetus to colonisation was trade, but this company, after an existence of nearly two centuries, during which it made vast fortunes for its members, declined because of corruption and trouble with the natives. It was dissolved in 1789, and the Dutch dependencies were taken over by the Crown. At the present time Holland, though one of the small European states, has dependencies with a population several times greater than that of the motherland. The proportion of Dutchmen in these dependencies is very small.

France and England in North America.—The scene of the first colonial efforts of both France and England was North America. In 1603, the French settled on the St. Lawrence. The British soon followed. In 1606 the Virginia Company was given a charter for trading in the south of the present United States, and in 1620 the Pilgrim Fathers landed in New England. From that time settlers from both France and England went over to America in ever-increasing numbers. At first the home government paid little attention to the colonists. Charters were given to trading

companies for their internal management, but beyond that the government of England did not concern itself with colonial affairs. France in the meantime took up the subject of colonisation systematically and made plans for a vast New France. The French thought that the small English settlements on the seaboard could be circumvented by settlements on the two big rivers, the St. Lawrence and the Mississippi. In marked contrast to the English government, the French government helped colonists with capital and ships. The English colonists themselves, however, made up in perseverance and strength of character what they lacked in official support, and before half a century had elapsed they forced themselves on the notice of England in more ways than one.

The growing wealth of the colonists led the government to adopt a policy very similar to that of Spain. Both France and England saw an opportunity of enriching exchequers that repeated wars had impoverished. During the reign of Charles II. the well-known Navigation Acts were passed, all of which were aimed at utilising colonial commerce for English purposes. Foreign ships were forbidden to trade with English colonies ; foreign produce was to be sent only to England or English possessions ; aliens were not permitted to trade in English colonies. Only English-built ships were to trade with the colonies, and foreign goods could not proceed to the colonies without first being landed in England. Goods going from colony to colony were to have the same customs duty as if landed in England. These Acts, of the period 1610 to 1672, were obviously burdensome to the colonies. The colonists, however, by securing concessions on certain goods and by evading the laws, continued to prosper. Burdensome as the acts were, they certainly helped to develop the merchant navy of England and the colonies. Other stringent regulations followed, all of which aimed at making the colonies completely dependent on the home country. Similar rigorous restrictions were made on manufactures. The growth of manufactures, it was considered, would gradually make the colonies independent.

The American War of Independence.—Selfish legislation of this kind gradually led to the alienation of the colonies from the mother country. The climax was reached in the American War of Independence. England, whose treasury had been impoverished by many wars, desired the colonies

to contribute regularly for purposes of defence. The colonists held that there could be no taxation without representation. The colonists, indeed, did contribute, though irregularly, in men and money to various expeditions, but their man-power was more necessary for guarding their own possessions from the inroads of the Indians. Neither party would accept compromise: compromise was not seriously suggested. War resulted, in which the colonists defeated the mother country, which even in war did not realise the greatness of the issues. The struggle ended by the colonies declaring their independence.

Result of the War.—This war, the red-letter event of British colonial policy, led to more stringent regulation of other colonies. The ministers of the day thought that not their short-sightedness but their laxity had caused the disaster. Certain colonies which already had partial self-government (Nova Scotia, Jamaica, the Barbados and Bermuda) continued as before. Canada, though it had some powers of election in each of two provinces, was placed under an executive council, with a governor nominated by the home executive. New acquisitions, such as Trinidad, were placed directly under the home government. Cape Colony, which came under British control in 1815, remained for twenty years under military control, and Australia, as a penal settlement, was directly controlled by the Crown. It must be remembered of course, that, at the period of which we speak, the number of colonists outside the eastern parts of North America was very small.

New Developments. The Durham Report.—The growth of numbers in the colonies led to the spread of the idea of independence or responsible government. The doctrines of the economists were leading to new ideas of trade, in which freedom was held to be more profitable than restriction. These ideas were brought to the notice of government in a practical way by Lord Durham in his historic report, in 1839. Lord Durham was sent to report on the position of affairs in Canada, after a serious insurrection, and he strongly advocated responsible government as the only way to save both colonies and mother country from another American revolution.

Result of the Report.—Lord Durham's Report of 1839 marked the beginning of a new era in the colonial policy

of Great Britain. It led to the grant of self-government in the widest sense to the larger colonies, and it sowed the seeds of federation. It accorded with the more liberal ideas in both economic and political matters then coming into currency, and before many years were over, responsible government was introduced in Canada (in 1840), New Zealand (1852), Cape Colony (1853), and, from 1854 to 1859, in the various states which now constitute the Commonwealth of Australia which came into being in 1901. The Union of South Africa, which was created in 1910, is a remarkable instance of the more rapid percolation of liberal ideas into practical policy, for only a few years before two of the areas which compose the Union—the Transvaal and Orange Free State—had been engaged in a bitter conflict with Great Britain. The modern history of British colonial policy, or more accurately, "dependency policy" is a record of co-operative equality. The element of domination or imperialism has disappeared, and its place has been taken by equality of status. The supreme expression of this relationship is the Statute of Westminster, 1931, which is discussed later in this volume.

4. THE BRITISH EMPIRE

Basis of Classification.—The British Empire consists of so many types of units that no simple classification is possible. The usual method of classifying the dependencies is to group them according to the prevailing form of government and the authority which deals with them in the British Cabinet. But the forms of government are liable to change, as also is the authority which deals with them. A classification which may be suitable today may not be so a few years hence. Moreover, the type of government may be changed without a formal change in the official classification. Thus, Newfoundland, technically a Dominion, is at present in the anomalous position of having a non-parliamentary form of government, as, for financial reasons, her constitution was suspended in 1933, when the Governor was made responsible to the Secretary of State for the Dominions. The constitution of Malta, under which responsible government was given in 1921, was revoked in 1936, when a non-parliamentary form of government was introduced. Again, though no substantial change in the form of government may be made, the

official designation may be changed. Thus, Aden, which used technically to be a Chief Commissioner's province in India, attached to the Bombay presidency, was made a colony when the Government of India Act, 1935, came into force in 1937. Finally, the form of government is liable to change according to the state of development of the people. The policy of the British Government is to give responsible government in all cases where the condition of the people is sufficiently advanced and other conditions are favourable.

The British Empire may be divided in the following manner :—

Classification of Units in British Empire.—1. The United Kingdom itself, which consists of England, Wales and Scotland, which together constitute Great Britain, and Northern Ireland. Northern Ireland has its own system of responsible parliamentary government, but it is also represented in the British legislature.

2. Certain small islands close to Great Britain—the Isle of Man, Jersey and Guernsey, including Alderney and Sark. These islands have local legislatures, but their executive government is under Imperial control.

3. The Dominions—the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, Eire (the Irish Free State), and Newfoundland. Under the Statute of Westminster, 1931, the Dominions became practically independent states, although the constitution of Newfoundland is temporarily in abeyance. Several of the Dominions have partly developed areas, without full responsible government, such as the Northern Territory of Australia and the North West and Yukon Territories in Canada. Also, some of them have been given mandates by the League of Nations ; thus New Zealand is the mandatory for Western Samoa, Australia for New Guinea, and South Africa for South West Africa. Australia and New Zealand are also responsible for the government of some small dependencies, Australia for Papua, which has a nominated legislature, Norfolk Island and part of Antarctica, New Zealand for the Cook Islands and Ross Dependency.

Eire is in a peculiar position. The Irish Free State, technically a Dominion, has been abolished and replaced by Eire, which has been officially accepted as a member of the British Commonwealth of Nations. The status of Eire as a Dominion

is a matter of dispute, but for convenience it is so classified here.

4. India and Burma. India and Burma were under one government till the new constitution of India was introduced in 1937, in which year the India Office in London became the India and Burma Office.

5. Dependencies outside the British Islands. These, administered by the Secretary of State for the Colonies, are all technically colonies. They may be sub-divided according to their form of government.

(*a*) In the first class fall those with responsible government, or an approximation to it. They are three in number at present :—(i) Southern Rhodesia, which, in internal affairs, has responsible government, except for certain restrictions with regard to the native population. Its external affairs are controlled by the Imperial government. (ii) Malta, which normally has responsible government, subject to Imperial control in matters of imperial interest. At the moment, its constitution is in suspension. (iii) Ceylon. In internal affairs, the government is parliamentary, with certain limitations. In external affairs, the government is controlled by the Imperial government.

(*b*) In the second class come a number of colonies, all of which are administered by an executive government subject to the control of the Secretary of State for the Colonies, and in all of which there is a legislature either wholly nominated, or partly nominated and partly elected. The several subclasses are :—(i) colonies with an elected House of Assembly (lower house) and a nominated Legislative Council (upper house): Bahamas, Barbados, Bermuda. (ii) colonies with a partly elected Legislative Council, the constitution of which does not provide for an official majority : British Guiana and Cyprus. (The constitution of Cyprus was suspended in 1931.) (iii) colonies with a partly elected Legislative Council, the constitution of which provides for an official majority. This is a large class and includes several important dependencies : the Straits Settlements, Jamaica,

most West African dependencies (Nigeria, the Gold Coast, Sierra Leone), Kenya Colony, Trinidad and Tobago, the Leeward and Windward Islands and Fiji. (iv) colonies with nominated Legislative Councils : British Honduras, the Falkland Islands, Hong Kong and the Seychelles.

(*c*) In the third class fall colonies with no Legislative Council in which the Crown alone has the power to make laws : Gibraltar, St. Helena, Ashanti, Basutoland, and the Gilbert and Ellice Islands.

In most of the above colonies, in the second and third class, the Crown has power to make laws by Order-in-Council, and in most of those without a legislature the Governor is assisted by an executive council.

6. Protectorates. The protectorates are administered by officials directly responsible to the Secretary of State for the Colonies. In many respects they are similar to Colonies, and the sub-classes follow the same lines :—

(*a*) those with a partly elected Legislative Council with an official majority : Northern Rhodesia, and part of Nigeria and Sierra Leone ;

(*b*) those with nominated Legislative Councils : the Nyasaland and Uganda protectorates ;

(*c*) those with no Legislative Council : The British Solomon Islands, Kenya Protectorate, Gambia Protectorate, Northern Territories of the Gold Coast, Somaliland, Bechuanaland, and Swaziland.

In all the protectorates, the Crown can make laws by Order-in-Council. In some of them the legislature of the adjoining Colony is responsible for making laws, e.g., Kenya colony for Kenya Protectorate, and Gambia for Gambia Protectorate.

7. Protected States. These are of two types. In the first class come British North Borneo and Sarawak, which are autonomous in internal matters, but the foreign relations of which are controlled by the British government. In the second class fall those which are controlled by the British government in respect to both internal and external affairs : the Federated Malay States, the Unfederated Malay States, Brunei, Zanzibar and Tonga.

8. Miscellaneous territories, with different types of control or administration. These include territories, sometimes

called spheres of influence, which have treaty relations with the British government or with some unit of the Empire such as India. The Aden Protectorate, which consists of the territories of some Arab chiefs near Aden, comes into this class, as also do the Bahrain Islands in the Persian Gulf. Tristan da Cunha, and some other islands in the South Atlantic, some of which are uninhabited, are nominally under the British government. Tristan da Cunha is governed by the residents themselves, under a local chief. Ascension Island used to be governed by the Admiralty, but is now within the jurisdiction of St. Helena, which is under the Colonial Office. The "condominiums," where the administration is carried on under a joint agreement between two states, may also be included in the miscellaneous group. The Anglo-Egyptian Sudan is governed under a condominium with Egypt, which used to be a Protected State but which is now independent, subject to the reservation from Egyptian control of certain special British interests. The New Hebrides Islands are also administered under a condominium with France.

9. Mandated Territories. These are administered by the British government under a mandate from the League of Nations. They include Palestine, Tanganyika Territory, parts of the Cameroons and Togoland, and Transjordan. Except in Transjordania, which is semi-autonomous, the administration is usually carried on by a Governor and an advisory council or nominated legislature.

Common Features in the Empire: the Crown.—Although the form of government in the British dependencies presents such a wide variety, some features are common to all, with the exception of Eire, the successor of the Irish Free State. The most important common factor is the Crown. Allegiance to the Crown is not only a formal but a real bond of union. All executive work in its higher branches is done in the name of the Crown, whether the dependencies concerned be virtually independent or are governed directly from London. But this nominal bond is made real by the personality of the sovereign, and the family of the sovereign, by means of Empire tours and the representation of the Empire at imperial pageants such as coronations and jubilees.

The fact that the Crown is the "universal executive" in the Empire implies that all heads of the executive are

appointed by the Crown. Governors-General and Governors are all appointed by the Crown, usually on the recommendation of the appropriate Secretary of State in the British Cabinet. In the case of the Dominions a constitutional convention has been established that the Dominion government concerned is consulted before the appointment is made.

Responsibility in Government.—Constitutionally, the Crown is the emblem of another common element—responsibility of the executive to a legislature. Although the executives in the dependencies are responsible to the legislatures of their own countries is true only of those which have responsible government, nevertheless the executive in all cases is responsible ultimately to the British legislature. The Secretaries of State for both the Dominions and Colonies, as members of the British Cabinet, are responsible to the House of Commons. In the Dominions the head of the executive has a dual responsibility—to the parliament in the country he governs and to the British parliament. By constitutional convention, a Governor-General is responsible to the government of the country he governs ; nevertheless, he is liable to recall or dismissal by the British government, as also are all chief executive officers of colonies. In the Dominions the ministers of the Governor-General are responsible to their own legislatures.

Supremacy of the Imperial Parliament.–The next common factor is the supremacy of the Imperial Parliament in legislation. In theory, all laws passed by the British Parliament are valid throughout the Empire, and must be applied and enforced in every court of law in every dependency, so far as they are applicable. This paramount power of legislation finds its supreme expression in the Statute of Westminster, section 4 of which provides that no Act of the British Parliament passed after the commencement of the Statute "shall extend, or be deemed to extend to a Dominion as part of the law of the Dominion unless it is expressly declared in the Act that the Dominion has requested and consented to the enactment thereof." This section of the Statute means that, in virtue of its supreme authority, the British legislature, while not renouncing its legislative supremacy, has given to the Dominions complete control of their own legislation. In practice, this had been the case before 1931, when the Statute of Westminster was passed.

For many years, no Act or part of an Act which affected the Dominions was passed by the Imperial Parliament without prior consultation with them ; more usually, the Dominions themselves passed such legislation as was considered necessary for the interests of the Empire. The Statute of Westminster also enables a Dominion legislature to repeal or amend any Imperial Act, order or rule, so far as it is part of the law of the Dominion. Prior to the enactment of this provision, the relation of Imperial and Dominion laws was regulated by the Colonial Laws Validity Act, 1865, under which a colonial law was rendered void only if it was repugnant to the provisions of any Imperial Act, Order or Regulation extending to the colony. The "repugnancy" was removed by the Statute of Westminster ; in other words, a Dominion may pass legislation opposed to legislation applicable to the same subject passed by the Imperial Parliament, and such Dominion legislation prevails. This complete legislative autonomy, however, does not detract from the legislative supremacy of the Imperial Parliament : rather it is a symbol of it. The power has been given away ; but the power to take it back remains.

With regard to dependencies other than the Dominions, the British government does not pass Imperial legislation save in rare instances, where common action is obviously desirable. Colonies with legislative houses are left to make their own laws ; in small dependencies with more rudimentary forms of government, Orders-in-Council are issued.

Source of Constitutions.—In virtue of its legislative supremacy, the Imperial Parliament is the source of the constitutions of the dependencies. The constitutions of the dependencies are Acts of the Imperial Parliament, such as the British North America Act, 1867, the Commonwealth Act, 1900, South Africa Act, 1909, and the Government of India Act, 1935. All these Acts confer certain constituent powers on the dependencies of which they are constitutions, but the powers differ considerably in the different parts of the Empire. No constituent powers have been given to the colonies and protectorates, with the exception of those with full representative legislatures. The Statute of Westminster has conferred on the Dominions full constitutional powers, but if, as in the case of Eire, a Dominion enacts its own constitution, the Statute of Westminster is an integral part of its constitutional law, so long

as that Dominion remains in the British Commonwealth of Nations.

Control of Legislation.—Another element which is all but universal is control by the Imperial government of legislation in the dependencies. In all the legislative processes in all dependencies, the Governor-General or Governor has to assent to a measure before it becomes law. He may refuse assent, or reserve a bill for royal assent. Refusal of assent is now a dead letter in the Dominions, where parliamentary practice is followed ; but reservation is still possible, indeed necessary in some cases, e.g. in the Commonwealth and the Union of South Africa reservation is necessary with regard to legislation restricting the right of appeal to the Privy Council. The Union of South Africa has abolished the rights of disallowance and reservation, except in the case of appeals to the Privy Council. The Irish Free State abolished all such rights. In the case of dependencies other than the Dominions, the Imperial government may control, or influence legislation, either by specific constitutional provision, or by the exercise of pressure on the executive head of the government.

Legal Principles.—There is also a legal nexus between the United Kingdom and the dependencies. This is of a twofold character. First, certain fundamental legal principles are universal throughout the Empire. The chief of these is the rule of law, whereby no person normally can be deprived of his property or liberty save through trial in the courts, or be subjected to arbitrary official action. The British system of law makes no distinction between officials and private persons ; an official is subject to the same process of law as a cooly, except where, by law, specific rights are conferred on him, for administrative purposes. The rights of personal freedom, freedom of speech, freedom of public meeting and freedom of conscience are all fundamentally the same throughout the Empire. Second, the organisation of the judiciary has certain common features. The highest judicial officers in all dependencies are appointed under statutory authority ; they normally hold office during good behaviour or the royal pleasure, and can be removed only by a special process. The process may be action by the Crown on the passing of addresses by both Houses of Parliament, or, where appointment is made during the royal pleasure, on reference to the Judicial Committee of the Privy Council. In all the depen-

dencies also, the Crown may hear appeals from the courts. In practice, appeal lies to the King-in-Council, or the Privy Council. The manner in which appeals are made is regulated by statute or Order-in-Council : they may be brought as of right, because the amount involved falls within the limits prescribed by the Order, or by a local Act, or by special leave granted by the Judicial Committee of the Privy Council or by a court acting on their behalf. The Statute of Westminster empowers Dominions to abolish appeals to the Privy Council and this was done by the Irish Free State.

Royal Prerogatives.—Other common links of a constitutional or semi-constitutional character are the prerogative of mercy, under which any citizen of the Empire may appeal to the King for pardon, and the Honours prerogative. The prerogative of mercy, or pardon, is usually delegated to Governors-General or Governors, either in law or in fact. In India, for example, the Governor-General is given powers of pardon, by the Government of India Act, 1935, and where no such delegation is made, cases are invariably referred to the head of the government concerned. The Honours prerogative implies that the Crown is the fountain of all honours, decorations and medals. The Crown acts on the advice of his ministers in the conferment of all titles and orders, save those of a private and personal character.

The Union Jack.—One of the symbols of imperial unity which means most to the ordinary citizen is the national flag. The flag of the Empire is the Union Jack, but the custom has grown up in some cases of superimposing on the Union flag proper the badges, or arms, of the dependencies. Union Jacks, without any additions, have to be flown at the residences of Governors-General or Governors throughout the Empire. The red ensign is the national emblem for all boats belonging to British subjects, except His Majesty's ships. In the Irish Free State, the determination of the flag of which was left to itself, the Union flag was replaced by a tricolour, which has been adopted by Eire. In South Africa two flags are used—one the Union, the other a National flag.

Official Means of Communication.—Finally, there is some recognised means of communication between the dependencies and the British government. The Prime Ministers of the Dominions may correspond with each other direct, or through the Dominions Office of the British Government.

Direct communication with the King is also possible, as in the case of the appointment of Governors-General. Ordinarily the channels of communication are either direct to the Dominions Office from the departments in the Dominions, or through the High Commissioners of the Dominions in London. In the case of India and Burma the channels of communication are the High Commissioner and the India-Burma Office. With regard to commercial matters, the usual method of representation is through the High Commissioners in the case of the Dominions, India and Burma, and Agents-General in the case of the Australian states, which in some matters may communicate directly with the British Government through the Governors and the Canadian provinces, which have no direct access to the British government. Colonies, protectorates and other dependencies are represented by the Secretary of State for the Colonies. Certain financial and commercial matters are dealt with by the Crown Agents for the Colonies.

5. IMPERIAL CO-OPERATION

Imperial Federation.—The gradual devolution of power to the dependencies and the consequent loosening of the constitutional ties between them and the United Kingdom, at one time caused considerable concern. Some political thinkers, fearing that the growth of "colonial" nationalism would ultimately dismember the British Empire, were of the opinion that some form of federation offered the most promising solution to the problem of Imperial co-operation and unity. Imperial federation, however, never became a live issue, for the reason that it proposed to do what is obviously impossible, to unite in a federal constitution units so widely apart geographically and so divergent in racial, religious and linguistic character. By conferring what in effect is complete constitutional freedom on the Dominions, the Statute of Westminster put a period to all federal ideas.

The Imperial War Cabinet.—The British Empire is now organised on the basis of mutual co-operation, on a voluntary basis. The Great War was the supreme and decisive test of this principle. No obligation rested on any of the dependencies to enter the field on behalf of the United Kingdom and the allies; yet all rallied round the mother country. They contributed their full proportion of men and money to

the common cause. Prior to the Great War, the extent to which the Dominions should share in framing foreign policy had been under discussion, but no appreciable progress towards a solution of the problem had been made. The British government had agreed to keep the Dominions fully informed of all developments which might affect them, and had suggested that a resident minister, of cabinet rank, should be appointed as High Commissioner in London to keep in close touch with the British government. The Committee of Imperial Defence had previously been created in order to co-ordinate measures of defence, but when the Great War broke out, suddenly and unexpectedly, the British government assumed full responsibility not only for the declaration of war but for its conduct. With the prolongation of the war, it became necessary to invite the Dominions and India to discuss with the Imperial Government both the conduct of the war and the terms of peace. In this manner the body known as the Imperial War Cabinet came into being. In 1916, the Prime Minister invited the Prime Ministers of the Dominions to attend a meeting of the British War Cabinet to discuss questions of imperial policy. India was also invited. She was represented not only by the Secretary of State but also by representatives of the Indian States. The Secretary of State for the Colonies represented the Colonies, Protectorates and other dependencies. The Imperial War Cabinet held several meetings. At plenary meetings the Prime Ministers of the Dominions were present but at other meetings they could be represented by deputies.

The underlying idea of the Imperial War Cabinet was, as Mr. Lloyd George said, that "the responsible heads of the government of the Empire, with those ministers who are specially entrusted with the conduct of Imperial policy, should meet together at regular intervals to confer about foreign policy and matters connected therewith, and come to decisions in regard to them which, subject to the control of their own Parliaments, they will then severally execute." The Imperial War Cabinet was not strictly speaking a cabinet. It had no common responsibility to a legislature. The members were individually responsible to their own governments. There was no head of the Cabinet; the British Prime Minister presided, but only as a courtesy due to the mother country. No majority decisions were taken, for there

was no common executive. It was a miniature League of Nations. Each representative had to convey the Cabinet's desires to his own government, which was responsible for their execution. In spite of all these theoretical difficulties, the Imperial War Cabinet admirably fulfilled its function, indeed as Dr. Keith has said, the Dominion and Indian representatives "speaking in a position of absolute freedom, possessed far greater influence than they could ever have exerted merely as minority members of a federal legislature or executive."

Dominion Independence in Foreign Affairs.—With the end of the war the Imperial War Cabinet dissolved, but the Dominions and India were represented at the peace negotiations. The Covenant of the League made provision for the admission into the League of the self-governing Dominions and India. During the peace negotiations the British Empire delegation acted as a unit, but it was inevitable that the national status of the Dominions in foreign affairs should call for more accurate definition. Within the next few years the principle was established that a Dominion could not be bound by a treaty unless it were signed by a Dominion representative empowered to act for it. Also, the Dominions were granted the right, which has been exercised in several cases, to representation by their own ministers at foreign courts. The course seemed set for the Dominions becoming independent in foreign as well as in domestic affairs. This independence, indeed, they soon achieved with respect to the League of Nations. In the League of Nations, and its sister body, the International Labour Organisation, Canada, Australia, New Zealand, South Africa, the Irish Free State (now Eire)* and India have separate representation, and may vote independently of the British delegation if they so wish. It was originally feared by some states that the inclusion in the League of so many units of the British Empire would give undue weight to the British Empire vote as against that of other nations, but experience proved that the units of the Empire preserve their independence. Their representatives are appointed by, and vote according to the directions of their own governments. Moreover, the Dominion and Indian governments correspond directly with the Secretariat of the League, and the ratification of Conventions, or the adoption of Recommendations in the case of the International Labour

Conferences, are effected by the individual governments. Further, in the organisation of the permanent Court of International Justice the Dominions and India are recognised as independent units ; each is authorised to take part in the procedure prescribed for the appointment of judges to the Court.

Co-operation in Foreign Affairs.—In the conduct of foreign relations, the Dominions co-operate with the United Kingdom, but from the nature of their constitutional relationship, it is not possible to have any central body to act for the Empire as a whole. The theoretical link of unity is the King, in whose name negotiations are conducted, but, as each government is parliamentary, its responsibility must be to its own legislature. Hence the Dominions cannot admit that the King, as advised by the Secretary of State for Foreign Affairs, can act for them, except when they themselves consent. Methods have been devised to meet this difficulty. In matters which concern one Dominion only, a Dominion minister may act on behalf of his own government only ; but in all matters of common concern, action is taken after consultation with the Imperial Government and other Dominions. The ratification by the Imperial government of treaties, agreements, or conventions involving any or all the Dominions is effected only at the request of the units affected, and those units are responsible for securing parliamentary approval, if such action is required. The practice has also developed that in agreements made with foreign powers which concern any of the Dominions, a Dominion representative may sign on behalf of his government ; if a Dominion representative is not present, then the British Minister may sign separately for those Dominions which wish to be bound by the treaty. Another item of procedure which has been agreed upon between the United Kingdom and Dominion governments is that Dominion governments may correspond direct with representatives of the Imperial government in foreign countries in matters which concern themselves and the foreign countries only, e.g. in commercial treaties.

Pooling of Information.—The most important factor in the administration of the foreign affairs of the Empire is the prevailing system of pooling information. The Imperial government, on which the ultimate responsibility for all decisions on foreign policy rests, keeps the Dominions informed of all developments. The Dominion Prime Ministers, who

usually are in charge of the Departments of External Affairs in their own countries, may correspond directly with the British Prime Minister and with the Prime Ministers of other Dominions, so that there is no danger of a treaty being negotiated by any government in the Empire which may adversely affect another. The Dominions Office, in London, the normal clearing house of all Dominion intelligence, is in touch with the various departments in the Dominion governments. Communications may also pass through the High Commissioners. As an emblem of the equality of the British and Dominion governments in foreign affairs, the British government has appointed High Commissioners in some of the Dominions; these perform functions analogous to those of the Dominion High Commissioners in London. The right of correspondence through the Dominions Office, High Commissioners or Prime Ministers does not detract from the right of Dominions to deal direct with the Crown in matters personal to the Crown, e.g. in the appointment of Governors-General.

Co-operation with Colonies.—For the Colonies, Protectorates and other dependencies of the United Kingdom, the Secretary of State for the Colonies acts as the Prime Minister's representative. All political matters are dealt with by the Governors of the dependencies concerned and pass through him to the Secretary of State for the Colonies. In the case of India, communications normally pass through the Government of India to the India Office or from the Government of India and provincial governments to the High Commissioner for India. The Government of India has also a right to direct communication with the Dominions and for several years has been represented in the Union of South Africa by a High Commissioner whose main function is to deal with matters arising from the relations of the Union government with the large resident Indian population. The Governor-General of India has direct relations with certain neighbouring states and is represented in them by officers of a semi-diplomatic character.

Defence.—In respect to defence, which is closely allied to the conduct of foreign relations, the position is similar. The principle of consultative co-operation is followed. In the early days of colonial enterprise, military and naval defence was undertaken by the British government. Local militia was maintained for internal security, and in the course of

time, when resources were sufficient, the Dominions were able to maintain their own land forces. Naval defence has always been more a matter of Imperial concern. As early as 1865, the British Government authorised the colonies, as they were then, to maintain local forces for harbour and coastal defence, but for more important naval measures the Home government was almost entirely responsible, though the colonial governments were always taken into full consultation. When British naval forces were posted to colonial waters, contributions had to be paid to the Imperial exchequer for their cost ; and this raised the question of control. At the Imperial Conference in 1911 certain definite principles governing the control of military and naval forces were agreed on. In time of peace, it was agreed that Dominion forces should be under the control of the Dominion governments. Areas were delimited in Australian and Canadian waters within which the movements of fleets would be confined ; and when foreign ports were to be visited it was agreed that the concurrence of the British government should be obtained in order that the necessary diplomatic arrangements could be made. It was also agreed that there should be similar standards of equipment, training and discipline, and that where necessary the British government should provide facilities for training. During the Great War, the Dominion forces were placed at the disposal of the Imperial government, but they were maintained as individual formations, with their own officers. Since the Great War, the principle has been established that the Dominions are responsible for local defence. The British Government is responsible for the protection of trade routes and also for naval defence in the Empire as a whole. Some of the Dominions have continued to maintain naval forces of their own, and these may be used in co-operation with British naval forces.

The Imperial Defence Committee.—In matters of defence, there is a definite Imperial organisation which, in practice, guides all the Empire governments. This is the Imperial Defence Committee. The Imperial Defence Committee was established in 1895, and has been continuously in operation since then. The Prime Minister is chairman of the Committee, and its personnel includes the Secretaries of State for War, Air, Home and Foreign Affairs, the Dominions, the Colonies, India, the First Lord of the Admiralty, the Chancellor of the

Exchequer or the Financial Secretary to the Treasury, the Lord President of the Council, the Permanent Secretary to the Treasury, the chiefs of staff, and such Dominion experts as may be summoned having regard to the business to be transacted. The Committee deals with all matters of defence, and expenditure connected therewith. Imperial co-ordination is secured not only by representatives of the dependencies in the Imperial Defence Committee, but by Defence Committees in each Dominion, which work in close co-operation with the main Committee. An Imperial Defence College is also maintained in London to which officers from the British and Dominion forces are deputed for special courses of training.

The Imperial Conference.—The most important organisation in the Empire for sustained imperial co-operation is the Imperial Conference. This Conference is the lineal descendant of the older Colonial Conference, the origin of which may be traced to the presence in London in 1887 of the Prime Minister of the Colonies at the jubilee celebrations of Queen Victoria. At the earlier meetings the Secretary for the Colonies presided, but when the name was changed to Imperial Conference, the Prime Minister presided. The Imperial Conference meets at periodic intervals, and discusses all subjects of Imperial importance, such as tariffs, emigration, shipping, wireless communications, marketing and commercial arbitration. Sometimes separate Imperial economic conferences are held at the same time; sometimes the Imperial Conference is practically an economic conference in itself, e.g., the Ottawa Conference of 1932. The Imperial Conference from time to time has established permanent organisations to deal with specific subjects. The Imperial Prime Minister, and other British ministers concerned and the Prime Ministers of the Dominions and other ministers concerned, with the Secretary of State for India and other Indian representatives, constitute the Imperial Conference. Special conferences are held from time to time to deal with special subjects, e.g. the Conference on Cable and Wireless Communications in 1928.

Colonial Conferences.—Colonial Conferences have also been held separately to deal with matters of common interest to the Colonies. These conferences are arranged by the Colonial Office, and the Secretary of State for the Colonies presides. Representatives from the Dominions and India may attend as observers.

The chief organisations that have been created as the result of these Conferences are (*a*) the Imperial Economic Committee, which deals with marketing of foodstuffs, conducts inquiries into production and deals generally with economic questions. The Dominions, India, Southern Rhodesia, the Colonies and Protectorates are represented on it. (*b*) The Imperial Shipping Committee, also constituted on a representative basis, deals with Empire trade routes, shipping freights and questions of maritime transport. (*c*) The Imperial Communications Advisory Committee deals with questions of policy regarding transport services, such as the initiation of new services, rates, and the distribution of traffic between alternative routes.

Some specialist institutes of an imperial character have also been established, such as the Imperial Institute of Entomology and the Imperial Mycological Institute. Both these institutes deal with plant diseases, and are supported not only by the Dominions and India but also by the Colonies and Protectorates. The Colonial Office is aided by a number of advisory Committees, such as the Medical, Survey, Education and Research Committees. Composed on a representative basis, these committees are instrumental in securing a unity of direction and principle in the subjects with which they deal.

Imperial Federation.—Imperial federation is now a dead letter, but it had considerable vogue among political thinkers just before and after the Great War. No serious attention was paid to it by any Imperial Conference, although at one time suggestions of federalising the Empire were tentatively put forward by New Zealand. Superficially, federalism seems to offer a solution to the imperial problem, for there can be no doubt of the "sentiment of unity" and the desire for co-operation. But federalism of any kind would be foredoomed to failure for one reason only : it would destroy the independence of the many units of the Empire which are now autonomous. British Imperial policy for many years has been directed towards the removal of constitutional shackles : federalism would reimpose them in the form of a rigid constitution which, in effect, would make all the free units, including the United Kingdom itself, subordinate law-making bodies.

If such a constitution were to be devised, the question

would arise as to how the federal legislature and executive would be composed. Would there be a legislature with representation of all units ? Would the representation be proportionate to population, political importance or to financial resources ? Were it proportionate to population, would the United Kingdom be satisfied with one-eighth, and Australia with one-fiftieth, of the representation of India ? What would be federal subjects, and what would be "dependency" or "unit" subjects ? Could any list be drawn up that would not lead to interminable constitutional dispute ? Apart from such difficulties how could agreement be reached on financial issues ? Would, say, defence contributions be proportionate to population ? And, most complex question of all, would not an Imperial federation imply free trade between the units ?

The simple truth is that an empire containing so many diverse elements, in races, religions, languages, traditions, and interests, and stretching over the whole surface of the globe, does not lend itself to constitutional measures which suit individual nations or states. Any system of federation would raise problems a thousandfold more difficult than it would solve. And it would mean loss of national prestige all round. The mother of parliaments would lose her pre-eminent position ; the Dominions would also be shackled. Moreover, whatever organisation were to be created, it would be ineffective; for it is inconceivable that the parliamentary countries would sacrifice the principle of responsibility. The government would have to be conducted by a system of instructions from individual governments.

So far as the British Empire is concerned all the benefits of federation can be secured, and the defects avoided, by the system now prevailing, of willing co-operation by means of extra-constitutional methods such as those described above. Were such methods to fail, federation would be foredoomed to disaster. Professor Dicey's words are still true. "My full belief is that an Imperial constitution based on goodwill and fairness may within a few years come into real existence. The ground of my assurance is that the constitution of the Empire may, like the constitution of England, be found to rest far less on parliamentary statutes than on the growth of gradual and often unnoted customs."

CHAPTER XIX

THE END OF THE STATE

1. INDIVIDUALISM

General.—From the foregoing chapters we have seen that there are many kinds of government and many different ways in which similar types of government are organised. We must now proceed to examine various theories of the end of the state and the functions of government. Every government exists to carry out the purposes of the state, and in the modern world the translation of purpose into practice depends on the particular theories of the end of the state prevailing at any moment or over a period of years. This is the age of democracy, of the rule of the people by the people, and governments work according to the general directions given by the people. The people decide how far government is to control their lives, whether it is to have general powers or particular powers, whether it is to interfere or not to interfere with their daily lives and activities, or, to put it in technical terms, whether it is to be socialistic, or individualistic, or partly socialistic and partly individualistic.

Statement of the Individualist Position.—The individualistic theory is also known as the *laissez-faire* theory. *Laissez-faire* is a French phrase which is generally translated by "leave alone." Each individual, according to this theory, should be restrained as little as possible by government. Government in fact is an evil which is necessary for mankind. No social union at all is possible without the suppression of violence and fraud. The province of government therefore should be limited to the protection of citizens; beyond this the individual should be left alone. "The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. The only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant. . . . The only part of the conduct of any one, for which he is amenable

to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign." This passage, quoted from John Stuart Mill's *Liberty,* is a classical statement of the individualistic position.

According to this view every agency of government which is protective—e.g., the army and navy, police, law courts, is justifiable; everything which is not directly protective, such as the post-office, telegraphs, railroads, education, is an unjustifiable sphere of governmental activity. The functions of government according to the individualistic theory may be summarised thus:—

1. Protection of the state and individuals from foreign aggression.
2. Protection of individuals against each other, that is, from physical injury, slander, personal restraint.
3. Protection of property from robbery or damage.
4. Protection of individuals against false contracts or breach of contract.
5. Protection of the unfit.
6. Protection of individuals against preventable evils such as plague or malaria.

The last two are not accepted by all individualists.

Historical.—The theory of individualism became prominent as a political force towards the end of the eighteenth century. Its origin may be traced to Locke. Bentham and the Utilitarians carried it on. The Economists, from Adam Smith to Cobden and Bright adopted it; in fact many of the best known names in the history of both Political Economy and Political Science might be quoted in its support. Like most political theories it had its origin in actual historical conditions. Over-government, that is, interference by government in matters which many people regarded as the legitimate spheres of private life and endeavour, led to a theory which emphasised the importance of the individual as opposed to government. The theory was a great power in practical politics, though it never had a hold on the people as a whole. It led to the abolition of old laws of interference, especially in trade and commerce, and to new forms of governmental control. Evils arising from the practice of individualism led to the fall or at least severe modification of it, just as the theory itself arose from evils which were universally admitted.

Bases of the Theory.—The theory has been advocated from three chief stand-points: first, the ethical; second, the economic; third, the scientific.

1. **The Ethical Basis.**—The essence of the ethical argument is that the end of man being the harmonious development of all his powers, each individual must have the freest possible scope for the realisation of this end. A form of society in which every individual can compete freely with everyone else leads to the best results. If government interferes beyond a certain minimum the individual is cramped, his powers have no outlet, with the result of a loss of man-power to society as a whole. Government interference kills self-reliance. Self-assertion, the guiding principles of each individual, leads to the full development of the powers of each. Self-help, says the individualist, is the spring of human progress. Once government begins to interfere, the individual is tempted to be lazy. He expects others to do for him what he himself should do. In such a government-aided society the result is a uniform level of mediocrity; there is no stimulus for the outgrowth of talent.

The end of the state, according to this theory, is to perfect or complete the individuality of its citizens. Perfect or complete individuality will mean that government is no longer necessary: each man will be a law to himself. The state is a contract, a "joint-stock-protection society," as Spencer called it, or a type of society due to aggression. The "natural right" of each individual is to develop his powers to the maximum, and government interference, so long as government is necessary for such development, should be a minimum.

2. **The Economic Basis.**—The individualistic argument has been applied with far-reaching effects to the economic world. Everyone, according to the individualist, seeks his own interests. If, without let or hindrance by government, he is allowed to do so, society as a whole will benefit. If each one is allowed to invest his capital in the way that will yield him the greatest return, if every labourer can freely accept the highest wage, the community will benefit. Free competition will bring the highest profit. Demand and supply will determine the channels in which capital and labour will flow. Prices, too, should be unfettered. Increased demand means increased supply. Prices will rise and fall according to the usual laws. Foreign trade should be free,

for every country will produce the goods that give it the best return, and will import those that other countries are in a better position to supply. In trade and commerce everything must adjust itself naturally, and this adjustment is in the best interests of all. Government interference in regulating prices, in setting up tariff duties, in giving bounties, in restricting conditions of labour hampers the working of a machine which, if left alone, remains in perfect order.

Effect of the Economic Argument.—In no sphere of life has the individualistic theory had more effect than in this. The theory was almost universally accepted in the latter half of the eighteenth century. The name of Adam Smith in particular gave it great effect, supported also as it was by Ricardo, Bastiat and Malthus. The effect in England was soon felt by the repeal of a number of long-standing laws, all of which were anti-individualistic. The Elizabethan laws regulating labour, laws regarding combinations of working men, the Navigation Acts of Charles II., which controlled the relations of Britain and the colonies in matters of commerce, and, most important of all, the Corn Laws, which were repealed in 1846, leading to the system of free trade in the United Kingdom—all these were anti-individualistic. The *laissez-faire* theory had no place for government regulation in any of those departments. Artificial support to labour or commerce meant that the weaker benefited at the expense of the strong, with consequent loss to the general well-being.

3. **The Scientific Basis.**—The scientific argument is based on analogy. The chief exponent of this side of the theory is Herbert Spencer, whose biological analogy we have noted in an earlier chapter in connection with the organic theory of the state. Evolution in the lower forms of life means, the survival of the fittest, a law which should also apply to human society. The natural course of progress means that the poor, the weakly and the insane must go to the wall. However hard this may seem applied to individual cases, the interests of humanity demand it. Human interests as a whole are more important than the interests of individuals : the hardship in individual cases is the price paid to secure the general well-being.

Summary.—Such, in outline, are the arguments of the three schools. Whatever their basis, they all lead in the

same direction, namely, to show the essential evil of government interference. To support their arguments, individualists have not been slow to expose the undoubtedly bad results of government interference in particular cases. These results appear especially in the economic sphere, where examples abound of the hopeless failure of government as contrasted with private management. It is easy, too, to compile instances of bad laws, laws which have had to be either repealed or amended. The ever-recurring repeal and amendment of laws is, according to Spencer, a proof that the laws should never have been enacted. The administration of laws, again, is frequently irksome, due either to officials or to the nature of the law. Much contempt has been poured on the so-called "paternal" type of government, a government which stands in the same relation to a citizen as a father does to a child. Apart from the general argument that such a government does not allow the individual to develop in the proper way, it is frequently ridiculed as inconsistent with the normal dignity of man. "Grandmotherly" is another derisive epithet frequently applied to it.

2. CRITICISM OF THE INDIVIDUALISTIC THEORY

The Theory is Extreme.—The individualistic theory is an extreme representation of an important truth. Arising, as the theory did, at a time when governmental interference obviously injured trade and individual enterprise, it over-emphasised one aspect of social life at the expense of others. Excessive state regulation, particularly in England, led to much meddlesome legislation, and the individualistic theory arose from the general impatience of the time with the many petty laws which affected the everyday life of each citizen. An extreme in practice led to an extreme in theory. It is to be noted, however, that not everyone who may reasonably be termed individualistic in thought is an extremist. The writers of the individualistic school vary considerably both in the general setting of the theory and in detail. Some, like Spencer, may well be called extremists, but there are many moderate writers whose ideas almost merge into those of socialists, though theoretically socialism is the opposite of individualism.

Individualism and Self-help.—The outstanding truth of individualism is that governmental interference if carried too

far does tend to lessen self-help ; but individualism exaggerates this point of view. Interference by government more often is looked on as essential to the well-being of the community than resented as meddlesome or irksome. Government regulation and control may even be the condition of self-help, for experience has proved that, without it, certain sections of society are too much at the mercy of others. Where government action does to some extent weaken individual initiative is where government undertakes enterprises which might be left to private enterprise. In India, for example, government is often condemned for undertaking too many functions of an industrial character, with the consequence that private enterprise is stifled. On the other hand, the industrial activities of government may be directed towards the encouragement of private enterprise. The individualist forgets that there may be initiative on the part of governments as well as of individuals.

The Basis Unsound: Meaning of "Self" and "Natural."—The basis of individualism is unsound. It regards the individual as essentially self-centred or egoistic. Self-assertion is considered to be the central characteristic of man ; seeking his self-interest is claimed to be the "natural" order of things. The state and government are therefore said to be "unnatural," for they stand in the way of self-assertion and self-interest. Such a view shows a misunderstanding of both "self" and "natural." Man is by nature social. Every individual is born into society, on which he is dependent for his mental and physical existence. He has no meaning apart from society. A non-social individual is a mere abstraction. The state, again, instead of being antagonistic to the individual, is part of the individual. The very being of the state depends on the individual. The state is not something separate. The state and government are a type of society of which the individual is a member. Man has instincts, interests, and powers which exist in a social medium, and from these arises the fundamental fact of his social life—the state.

To regard man as essentially self-centred is therefore wrong. Society involves others as well as the self, and the welfare of a self is integrally connected with the welfare of others. The welfare of the self *plus* others is as vitally connected with the welfare of the state. It is unsound to set the individual in opposition to the state or its organisation,

government. We may do so, indeed, to represent a certain point of view, as, when we speak of an individual resenting this or that act of government. This is quite a different thing from regarding the individual as essentially opposed to government. To say so is tantamount to saying that the individual is opposed to himself.

"Natural Rights."—Individualists continually speak of the "natural" right of the individual to develop, or of the "natural" order of development. The misuse of the word "natural" we have already noted in connection with the Social Contract theory and with liberty. The state is as "natural" as the right of the individual to self-assertion, for the state is the expression of the very nature of man. Man's rights are bound up with the state. His rights exist in and through the state, to which by nature he is indissolubly bound. Realisation of these rights is possible only through the state.

What Interference Implies.—A proper understanding of man as a social being, and of the state as an expression of man's nature thus completely changes the meaning of self-government and interference. The state exists for human purposes; it exists to further the moral ends of man, and as such it must, through its organisation, provide a suitable medium for the realisation of moral ends. A society in which every one is at war with every one else on the principle of self-assertion, even though that self-assertion be limited by an "individualistic minimum" of protection of life and property, is not a medium for the realisation of true moral ends. Liberty is a relative term. It means self-determination, but self-determination does not mean that the individual can do as he likes with what is recognised by society as his own. Each self must try to reach perfection, and as other selves are involved in the same process, the self must submit to control, a control which the state must exercise. The free exercise of the human mind and activity demands control in order to allow the individual to achieve moral perfection, and this control is not external to the individual but an essential part of his nature.

Difference between State Control and Interference by Government.—State control therefore is not an evil, but a positive good. Certain kinds of control or certain methods of control are bad. Laws which interfere with disinterested moral action, laws for example which weaken morality by

interfering with religion, or those which take away individual self-respect or weaken family feeling—such laws are bad, and they are bad not because of any theory of *laissez-faire* but because they are injurious to society, and do not create conditions of life suitable for the realisation of the highest moral ends.

Mistakes of Government and of Private Agencies.—Governmental restraint may be exercised in irksome or disagreeable ways. Government and its officials may make mistakes, but to condemn all government restraint because of this is similar to condemning all education because we have a few bad schools. As evidence to support their theory, individualistic writers have pointed to the many mistakes governments have committed in the past. It would be as easy to compile lists of indubitably good actions done by government. Government is a public body, and this must be borne in mind when judgment is passed on its actions. Its mistakes are known to everybody, whereas the mistakes of private bodies or corporations are either not generally known or are lightly passed over. The good actions of government, too, rarely meet with praise such as similar acts by private individuals do. It seems that the normal expectation of the average citizen is that government, with its wide command of resources, should do things *better* than private individuals, hence arises the disproportionate blame for government in cases of failure, the failure often being relative, as the expectations are higher.

Confusion of State and Government.—Condemnation of state-control on this score is in part based on a confusion between state and government. The failure of certain acts of government is by no means a condemnation of the state. The acts of government are variable ; the fact of the state is fixed and unchangeable. The end of the state at any given time may not coincide with the particular acts of government even though the determination of the province of government must ultimately depend on the prevailing idea of the end of the state.

Further Examination of J. S. Mill's Theory.—Individualists find it extremely difficult to be consistent in their own theories. We have already seen how Mill finds in self-protection a working criterion of the goodness or badness of laws. Mill's simple criterion, however, completely breaks down when applied to individual questions. Mill himself says that large

classes of individuals must be excepted from his rule. It applies only to individuals in the maturity of their faculties. Children are excluded, but, it might reasonably be asked, when do children cease to be children, and what rules apply to them, when they are under twenty-one years of age ? Barbarians, he also excludes, but he gives no definition of a barbarian. Maturity of faculties is a phrase admitting of many interpretations, each of which will be unsatisfactory to some individuals.

Still a greater difficulty emerges in Mill's theory when we come to interpret "self-protection." "If a man's conduct affects the interest of no person besides himself," says Mill, "the state has no right to interfere." This is the crux of the individualistic position. No act of an individual has reference to himself alone, so that on Mill's own principle any action of the state is justified. State control of education, sanitation, food-supply, conditions of labour—can all be justified on the ground of self-protection. The self must be guarded from itself as well as from other selves. To Mill the individual is a self-centred entity. He confuses individuality with eccentricity or oddity. It is true that any form of society is richer and more progressive if the differences among men are fully utilised. Genius, for example, is an exceptional thing and appears in an odd way ; but Mill makes this oddity or difference among people an end to be pursued in itself. Any criterion of individualism is bound to break down in the same way for from the outset its basis is unsound.

Modern necessity for Interference or State Control.—The complexity of modern social organisation has brought into clearer light the interdependence of individuals, and the necessity for state control. At the time when individualism was at the height of its popularity, industrial and commercial life was undergoing a great change. The invention of machinery, particularly in the textile industries, and the application of steam-power, let to a revolution in industrial life, known to history as the Industrial Revolution. The improvement of methods of transportation, especially in railroads and steamships, facilitated the growth of international commerce and competition. Large-scale production replaced the old home industries. Huge towns sprang up ; workers crowded into them from county districts. Old methods of government regulation, such as tolls, local duties and prohibitions on the mobility of labour, were all unsuited to these

new conditions. Complete freedom seemed to be the solution of the difficulty. The current individualism led to the absence of restriction ; but the result of the absence of restriction very soon led to the discrediting of the theory. No better argument exists against the theory of individualism than the practical results which followed its adoption in the political and industrial life of England. The evils which followed the growth of factories and big cities led to a new era of government control. Housing laws to prevent over-crowding and pestilence ; labour laws to prevent child labour and "sweating," factory laws to forbid unguarded machinery and undue danger to life—all these came into being and were universally acknowledged to be both necessary and salutary. The more complex the organisation of modern life becomes, the more necessary is state control, and naturally so, for greater complexity of organisation means that the individual is more than ever dependent on his fellows.

Modern Tendencies.—Individualism as a working theory for modern governments has been discredited. There is now a distinct swing of the pendulum to the other side, to socialism. Experience has proved that the individual is not the best judge of his own good. Were everyone able to know his own interests, individualism would be justified. Society, however, has to guard against ignorance and moral obliquity. The state has proved a better judge of both general and individual interests than the individual. Nowhere is this better shown than in matters of health and sanitation. One insanitary house in a neighbourhood may undo the good of a hundred clean ones. Communal control is also required to enforce professional and other standards connected with health. It is a matter of general concern that wholesome food should be supplied, and that doctors and pharmacists should be properly qualified. Dishonest traders are ever ready to profit by selling inferior food regardless of the consequences. Quacks are always ready to profit by ignorance.

Individualism and Democracy.—With the development of democracy there is not the same reason to support individualism. Democracy gives the people the management of their own government. In a big state this may not amount to much. The direct interest of the citizen in government varies in inverse proportion to the size of the state. But all modern governments are subdivided. Local government

provides a medium whereby the citizen feels that he does manage his own affairs. This is particularly the case where there is considerable decentralisation in local government. The line between socialism and individualism then tends to become less and less clear.

The Biological Argument Fallacious.—The biological argument of the individualists is inherently weak, because the very action of government which the individualists condemn may fairly be regarded as part of the evolutionary process. In any case the survival of the fittest may not mean the survival of the best. The theory forgets the essential difference between man and lower animals. Man can to a large extent master his environment. He can utilise it for various ends ; in other words, moral ideas enter into the notion of the survival of the fittest as applied to man. Man can improve his environment, and mould the course of history according to definite moral ends. The moral element in man would never consent to the ruthless waste of the physically weak or to the cruelty to the unsuccessful in life that the survival of the fittest implies. Private as well as public charity is forbidden by the biological theory, but obviously charity is a natural manifestation of human nature. The very acts condemned by the theory, therefore, are really part of the sum-total of the process of which we are asked to accept a part.

Conclusion.—To sum up, the theory of individualism brings into prominence certain valuable truths. In emphasising self-reliance, in combating needless governmental interference, in urging the value of the individual in society, it has contributed much to the virility of modern thought. It deserves credit, too, for its effect in destroying useless laws of petty interference, and in enabling our modern system to develop. But it exaggerates the evils of state control when it forgets that there are more instances of good state actions than of bad. It gives a fundamentally false conception of individuality, and finally, it has proved quite unfitted for the complexity of modern life.

3. ANARCHISM

General Exposition.—Anarchism is an extreme form of individualism. Etymologically, anarchism means no rule, and its exponents, while differing in many other respects,

are all opposed to the state and government. Anarchism is an ideology more than a scientific theory, but it has a sinister history owing to some of its modern followers having taken to revolutionary and terroristic methods as a means of propaganda. The general idea behind anarchistic theories is that human justice cannot be attained within the state. The state, or government, which is regarded as a means of oppression and exploitation, must be abolished, and its place taken by some sort of co-operative social organisation, in which there is the minimum of organised control. Human nature in essence is good and pure, but the state has corrupted it. When the state has been abolished and its place taken by voluntary associations, the human spirit will gradually reassert its natural tendency of reason and justice. Most anarchistic writers, while assuming the purity of natural motives, admit that, at least for a time, some sort of coercive power will be necessary to prevent lawlessness and invasion. Ultimately, they think, human nature will emerge pure and free, so that every one will be a law to himself, and will require no communal restraint.

Historical: Godwin.—Anarchism is not an entirely modern theory. The Stoic philosopher Zeno favoured a stateless society, with perfect freedom and equality; and some mediaeval Christian mystics thought that the complete life was one of constant communion with God, away from man-made laws and organisations. Such ideologies were harmless, but with the dawn of the Industrial Revolution, anarchistic writers came down to earth; their theories began to take a bitter revolutionary tone. William Godwin, father-in-law of the poet Shelley, usually called the first modern exponent of anarchism, was a visionary. His *Political Justice* (1793), a rambling dissertation on liberty, equality and fraternity, the immediate origin of which was the intellectual ferment caused by the French Revolution, was not revolutionary in the violent sense. He attacked private property and held that were it not for unfair economic conditions, the normal man would act reasonably and justly, without coercion. His ideal system of society is a condition of complete freedom from rule of any kind, though he admitted the need of coercion till men's natures became pure.

Proudhon.—Godwin's double attack on the state and property was carried on by the French writer Proudhon (1809-

65), whose fame rests largely on the slogan he gave to modern enemies of capitalism. *What is property?* is the title of one of his works, and the answer he gave was *Property is theft.* Proudhon, like Godwin, considered that two revolutions were required to enable men to attain true freedom: one was economic and one political. The state he condemned, because it represented the power of passion over reason and justice and because it helped to perpetuate inequalities due to private property. It should be replaced by a system of mutual help. Exploitation and monopoly, the chief evils of the capitalistic systems, would disappear. Proudhon worked out a plan of a Bank for the People to issue labour notes, which represented so many units of labour and which would be lent on the security of work offered. Proudhon's scheme had considerable vogue for some years in France. His anarchistic ideas attracted a good deal of attention in America, but it was in Russia that they reached their apex in the revolutionary anarchism of Bakunin (1814-76) and Prince Kropotkin (1842-1921). In their hands anarchism became an ally of the revolutionary socialism which ultimately destroyed the social system of Tsarist Russia.

Bakunin and Kropotkin.—Bakunin was the first of the anarchistic writers to urge the need of violence in the destruction of the existing social order. He also was an implacable enemy of religion. He was not however a thoroughgoing socialist; while advocating the nationalisation of land and the instruments of production, he was in favour of retaining private ownership in other directions. Religion, or the "superstition of God," he looked on, as did the Marxians, as the opium of the people. The corrupting influence of the state, he thought, should be replaced by voluntary co-operating groups. Kropotkin was a communist. Collectivism or state socialism in his view could not bring about an ideal social organisation. Nor would the dictatorship of the proletariat. He was in favour of reversion to free village communities, each of which, independent of the other, would be self-contained. Government would thus be direct, not representative; it would arise out of free agreements of the people of the village, or commune; no coercive agency would be required. To reach this goal, a violent revolution would be necessary. Kropotkin, like Bakunin, was an enemy of conventional

religion; the only real religion in his view was social morality.

Tolstoy.—The Russian poet and novelist, Tolstoy, was also an anarchist, but of a very different type. A devout man, he was strongly opposed to violent methods. His doctrine, sometimes called Christian anarchism, arose from his interpretation of Christ's teaching. The state and true Christianity, he thought, were mutually exclusive: the state was the result of selfishness and force. Christianity was the gospel of altruism and peace. The state could be destroyed by non-violent non-co-operation. Refusal to pay taxes, to perform military service and to accept the judicial tribunals of the established government would lead to its collapse. Private property also, he said, was opposed to the Christian principles of charity and brotherhood.

Nihilism.—Bakunin's and Kropotkin's doctrines were actively disseminated in Europe, by journals, pamphlets and anarchist clubs, and they received added impetus from another movement of Russian origin termed "Nihilism." Reinforced by the active extremism of revolutionary anarchism, nihilism soon became synonymous with terrorism. Nihilism, as the word implies, is a doctrine of negation. In its most general sense, it implies repudiation of all conventional ideas, standards and institutions. The term was first used in connection with artistic criticism, but it was through its political affiliations that it became well known. The leading exponent of nihilism was a Russian, Netschaiev, whose main thesis was that revolution had to be brought about whatever the means. Bomb-throwing, shooting, poison, all instruments of assassination were justified not only to "liquidate" or destroy political leaders, but to act as propaganda. Netschaiev had no ideas as to how society was to be reconstructed; all he could think of was the abolition of the existing state of society. The active side of anarchism and nihilism soon became apparent. Assassinations, real and attempted, of kings and presidents, anti-militarist and anti-patriotic propaganda, May day and other insurrectionist demonstrations became common, and certainly helped to achieve the public notoriety which the nihilists desired. Bakunin and Kropotkin expressed disfavour for these methods; they anticipated no reign of terror when the revolution came, for the revolution would be inspired by noble, unselfish motives. But their half-hearted opposition

was of no avail. Nihilism, like anarchism and revolutionary socialism, passed from the hands of doctrinaire leaders to the masses; by its appeal to the elemental passions of envy and greed, it was responsible for the most bloody revolution in history.

Anarchism and Russian Communism.—Anarchism and Russian communism share some common features. They both set out to destroy the existing social order by violence with the ultimate idea of establishing a classless form of society. For the most part they also share an antipathy to the conventional forms of religion. In other respects they are sharply opposed. Anarchism favours a co-operative system of society, on a voluntary basis, with the minimum of coercion, whereas the core of Russian communism is the dictatorship of the proletariat, relentlessly exercised by the state. Once the dictatorship is established, Russian communism may aim at a stateless society, but this seems doubtful. Both movements share with other extreme movements, such as Syndicalism, a profound dissatisfaction with the capitalist system and modern forms of democracy, and all these movements are on common ground in their appeal to the lowest of human passions, envy, greed and revenge. The anarchists presuppose that there are, or will be, no such human passions in their schemes of social organisation, and this is where they and all other revolutionary idealists fundamentally err. Society is composed of men, not of gods. Universal experience proves that coercion is required to keep passions in check; it also demonstrates that complete community of property is not humanly possible. Anarchists start from radically wrong premises; their conclusions cannot fail to be false.

CHAPTER XX

THE END OF THE STATE—(*continued*)

4. SOCIALISM

Statement of the Socialistic Position.—Socialism is the antithesis of individualism. Instead of opposing government control, socialism regards it as essential to the welfare of indi-

viduals and society. Far from being an evil, government is a positive good. The existing political machinery should be used for economic purposes. The means of production and distribution should be gradually taken over by government from the private capitalist. Capital, indeed, is necessary, but not the private capitalist. Private ownership in the production of goods the socialist condemns absolutely. Capital should be used for the good of all, not for the benefit of the few who are the lucky present possessors of it. As it is to be used for the good of all, the state, which exists to further the common well-being, should control it. Capital should be "socialised": in fact "socialisation" indicates the main idea of socialism better than the word "socialism" itself. The essential ideas of modern socialism are simply the substitution of state ownership for private ownership. It aims at securing the good of all, instead of the benefit of a few by replacing the present by another economic system. It does not seek to abolish private property. The socialist regards private property as essential to the development of the individual, but he considers that the distribution of private property is at present inequitable.

Common ownership of the instruments of production for the general well-being implies common management. Individual ownership and management, according to the socialist, have led to a lack of proportion in the economic world. Useless competition, shown in the multiplication of machinery used for the same purpose, and in advertising, can be abolished by the substitution of a power which is by nature co-ordinating. Government will prevent productive power going into the wrong channels : it will curb it in one direction and intensify it in another. Large savings will be effected, which will be used for further production of the proper type of article for the general good in some other way. By substituting common or collective for private or individual ownership and management of the instruments of production and distribution, and by allowing the continuance of private property in other directions, socialism aims at securing the general well-being as distinct from the benefit of a few. Under the socialistic system the individual is definitely subordinated to the community, in order that all may receive their proper reward. The measure of this reward is individual capacity and willingness to do work assigned by the common authority.

Socialism, Anarchism, Communism.—The term socialism has often been used interchangeably with anarchism and communism. The reason for this is that socialism covers many degrees of the same class of thought. The essential idea in all types of socialistic thought is the social ownership of the instruments of production and exchange and of land. "Collectivism" or, as indicated above, "socialisation" more adequately connotes what socialism proposes to achieve. But socialism may be moderate or extreme. Moderate socialists believe in the gradual and peaceful evolution of a socialist society. They are sometimes called evolutionary socialists. Extreme socialists believe in bringing about a social revolution by a class war, and in replacing democratic government by the dictatorship of the proletariat. They are sometimes called revolutionary socialists. Revolutionary socialism is the same as Russian communism, which is to be distinguished from pure communism, or simply communism. Anarchism is the opposite of socialism ; as we have just seen, it is an extreme form of individualism. It aims at the abolition of the state, whereas the state, as the co-ordinating and coercive organ of the community is essential to socialism. Communism is one of the earliest, and most universal of social doctrines, for it is a relic of the golden age and the state of nature which have received homage from writers of all kinds in all countries and in all ages—poets, philosophers, theologians, mystics, novelists and revolutionaries. In its simplest form it is a dream of utopias, as pleasant as it is false ; but when it passed from the realm of fancy to that of the practical world, it became one of the fiercest and most aggressive social programmes that the world has ever known.

The earliest communists looked on equal distribution of wealth as an ethical problem. Plato, the earliest of the communists, and in many respects the most thoroughgoing, could find no solution to the evils of class conflict which overtook Greece after the Peloponnesian war save in the recapture of the golden age or the state of nature, where there was harmony. Harmony could be secured only in a state where there was no riches or no poverty, where the words *mine* and *not-mine* could be applied similarly to the same object, and where philosophers would be kings. Land, houses, even wives would be common property, and everyone would be happy, for all personal interests would be merged in the

interests of the state. Plato's communism was of a very select type. It implied equality and community among the governing classes only. Equality of distribution among the whole population, which modern communism demands, is entirely foreign to Plato's doctrine.

More's "Utopia."—Communistic ideas are to be found in the Stoics, particularly Zeno, and in Roman literature and law, though community of property was excluded by the Roman lawyers from the definition of *ius naturale*. They received impetus from some of the early Christians who laid emphasis on the other-worldliness of Christian practice. The first systematic presentation of a communistic society came from Sir Thomas More, in his *Utopia* (1515). More pictures a community of about three to four million persons. They have no private property, and live under the direction of elected officials. The duty of these officials is to measure out the work of the community and to guide production. Every one lives the simple life; ostentation is conspicuously absent. This, added to the fact that More provides abundance of food in his ideal state, makes distribution easy. As there is no want, no one clamours for more than his due share. Everyone must work, and, as agricultural labour is the hardest work of all, each one must take his turn at it. More, unlike Plato, who, in his *Republic* regards the family as a hindrance to unity, preserves it. Over-population, More says, will be solved by emigration. Families should be as equal in size as possible; adoption aids natural deficiencies. More allows slavery; the slaves consist of convicts, prisoners of war, and foreigners who voluntarily accept service in the Utopian community.

Many other writers, some of them of a severely scientific turn of mind, such as Bacon, produced literary utopias, and religious zealots endeavoured to start communistic settlements in the New World as early as the first half of the seventeenth century. It was not till after the French Revolution that non-religious settlements were attempted. The best known of all was the attempt of Robert Owen (1771-1858). Owen was a manufacturer whose experience led him to draw up a new scheme of society for the relief of the labouring poor. He considered that poverty was mainly the result of evil environment. He accordingly tried to provide an environment such as would allow children to grow up apart

from the polluted air of competition. Men would thus be brought into communities where combined interest replaced individual interest. Labour would become temperate and effective in such a community and could be easily superintended by a communal authority. Owen and others tried many experiments to prove their theories at Orbiston near Glasgow, and at New Harmony, in the United States of America. These and other experiments were complete failures, and Owen is now remembered not as a communist, but as the apostle of co-operation and labour exchanges.

Modern Communistic Societies.—Many attempts to found communistic societies have been made since Owen's time, chiefly in America. Religious societies, such as the Moravians, Essenes, and certain monastic orders, have for long observed the principles of equal labour and equal distribution. Many societies, of which the Shakers, Rappists, and Perfectionists may be mentioned, have existed for a shorter or longer period. The Perfectionists of Oneida, founded in 1849, were a manufacturing community who flourished for a considerable time, but broke up ultimately owing to the lack of faith on the part of the younger members. These communistic settlements were far removed from the ideal communism of Plato. All the members were hard-working and had little opportunity to enjoy the leisure so greatly esteemed by Plato. They were not, moreover, true political communities. They were mostly held together by a common religious bond. A true political society is joined together by political ideals. Common purpose and common interests lead to permanent political organisation. These various societies, again, could function only within a larger state. The larger state was essential to their security from external interference, and it also received those members who did not find the community to their liking. The dissentients, instead of being dangerous, simply left the community. Again, no political lesson can be gathered from them because they were so restricted in area. They were smaller than modern small municipalities. In a community of a few thousand members, each individual can feel a certain amount of real personal responsibility for the community, and, where joint ownership exists, he can feel himself in some way an effective joint-owner. With the extension of the community, the power of individual members diminishes and the power of the common organisation grows. The whole meaning of

communism changes with the extension of the limits of the community.

The chief objection to communism is that it proposes to abolish what experience has proved to be essential to human existence. The abolition of private property and the family (though some communists would allow the family to continue) would make the normal social life of man impossible. The family and private property of some kind are essential instruments in the conduct of normal human activities. They are not creations of capitalism or engines of oppression ; they are the primary essentials of the ethical life, without which man cannot realise any moral ends whatsoever. They are essential moral attributes. Moreover, the abolition of private property of all kinds would take away the chief stimulus to personal exertion. If no one can own anything, if everything belongs to everyone, no one will have any interest in anything. Whatever may be the future of mankind, experience of the human species proves that the normal individual is to a very large extent actuated by self or family interest. He considers personal possessions, however small they may be, to be essential to life ; and he is not ready to permit government, whatever form it may assume, to regulate every aspect of production and distribution. Communism is an ideal of perfection ; it assumes perfect men working under a perfect government. Unfortunately, men and governments are fallible, and so long as they remain so, communism, in its pure sense, must remain utopian.

Varieties of Socialist Thought.—Socialist thought may be divided into sub-classes. The core is the same in all ; the varieties are determined mainly by the emphasis placed on programmes of action. Such programmes are of two types—evolutionary and revolutionary. Evolutionary socialists, also sometimes called Right wing socialists, or socialists of the Right, believe in the gradual evolution of capitalist society through constitutional means to collectivism. Revolutionary socialists believe in immediate action, through revolution. Marxian socialists are of the revolutionary school ; they usually claim to be the only orthodox or "scientific" socialists, but there are moderates and extremists in this group. The extremists are now identified with Russian communism, which has already been discussed in Chapter XI ; they have assimilated many of the tenets of extreme anarchism or

nihilism. The moderates adhere to the earlier teaching of Marx, and are not prepared to support undiluted terrorism as the means to achieve their end.

Christian Socialism.—Some schools of socialist thought are now of historical interest only. One of these is Christian socialism, the leading exponents of which were Frederick Denison Maurice and Charles Kingsley, the novelist. This school had considerable vogue in the middle of last century. The central tenet of the Christian socialists is that the competitive system cannot be reconciled with the teaching of Christ. Competition involves rivalry and enmity, whereas Christ taught brotherly love. Capitalism also means acquisitiveness, and greed for money, whereas Christ taught otherworldliness and kindness. The programmes of the Christian socialists were of a practical character. Maurice's chief aim was to encourage co-operative production by working men's associations, and he and his followers, as also several priests of the same cast of thought in France, concentrated their efforts on securing better working conditions, shorter hours, and free education.

Other Schools.—In Germany there used to be a group of state socialists, whose aims were of a moderate character, more akin to social reform than to collectivism. They were opposed to a class war. They thought that the existing social classes should be preserved but that the state should be used to help the weak against the strong. They advocated measures of social betterment, such as old age pensions, social insurance and enlightened factory legislation. Another German group was called Socialists of the Chair, a term applied to them in 1872 in derision by their opponents. The Socialists of the Chair were a number of young German professors who advocated state interference with property rights for the public welfare. They were not socialists at all, in the strict sense, but in the latter part of the nineteenth century socialism was often used as a derogatory term for persons supporting what were then regarded as advanced programmes of social reform. Most of the reforms advocated by these German schools have long since been realised in western industrialised states.

Three schools of socialist doctrine require more notice not only for their historical interest but also for their influence

on modern non-socialist thought and policy. These are Fabian socialism, Guild socialism, and Syndicalism.

Fabian Socialism.—Fabian socialism takes its name from the English Fabian Society established in 1883-4 by a small band of intellectuals who had met together for some years to discuss social problems. They were joined almost immediately by two men whose work brought the Society to the forefront of socialist organisations—George Bernard Shaw, the playwright, and Sidney Webb, who later became a Cabinet minister in a Labour government and was raised to the peerage as Lord Passfield. Many well known modern writers have been Fabians, such as Annie Besant, the theosophist, who became a leading figure in the Indian National Congress, H. G. Wells, the novelist, Mrs. Sidney Webb, Mr. Ramsay MacDonald, who became first Labour Prime Minister in the United Kingdom, and several university teachers, such as Professors Graham Wallas, Tawney, Laski and Mr. G. D. H. Cole. The Fabian Society became the "brains" of socialism in Great Britain. Its first important publication was *Fabian Essays* by Shaw and others, in 1889, and since then hundreds of Fabian tracts, the educative value of which has been enormous, have been issued. A special research department was created for the preparation and dissemination of socialist material ; this office was ultimately merged in a wider Labour Research Department, now supported by the Labour Party and Trade Union Congress.

The essential part of the Fabian Socialist programme is gradualness, as indicated by the name, which is taken from the Roman general Fabius Cunctator, or the delayer, whose delaying tactics against Hannibal became historic. The Fabians rejected the Marxian theory of value and the class war. Value they looked on as the creation of society as a whole, not of manual labourers only, and they saw no need for class conflict, for the reason that the trend of social legislation was proceeding inevitably towards socialism. But the socialism they envisaged did not mean a transfer of ownership to the workers, but to society as a whole, in which there was a place for all classes. They had faith that in the course of time the modern democratic state, based on an educated electorate with adult franchise, would bring about the requisite changes.

The practical programmes of the Fabians were of three

kinds. First, municipal socialisation. They actively supported the return of socialists at municipal elections with a view to securing municipal ownership of public utility services and natural monopolies. Their success in the dissemination of ideas on municipal trading is one of their most outstanding achievements. Second, social reform. They supported shorter hours, better conditions of working, better wages, safeguards against unemployment and better education. Third, taxation of inherited wealth, land values or ground rents and unearned incomes. In their land programme they were greatly influenced by the single tax theory of Henry George. Much of their influence was due to their policy of peaceful penetration, or education by reasoned propaganda; wherever possible, they used existing institutions to spread their ideas, and this policy, coupled with their doctrine of continuity, had far-reaching effects in the political field. In the years preceding the Great War, the membership of the Fabian society grew rapidly, especially among the middle classes, and, immediately after the war, it achieved its triumph by having its programme (Sidney Webb's *Labour and the New Social Order*) adopted by the Labour Party. Its identification with the Labour Party ended the Society's career as a definite school of socialist thought. It is now a centre for the intellectual discussion of socialist and social problems; it has still a research and propaganda organisation, and, as throughout its history, it finds its main support among intellectuals of the middle classes.

Guild Socialism.—Guild socialism is a doctrine of industrial self-government, or, as it has been called, "functional democracy." It accepts the normal socialist idea of communal ownership, but rejects state management, which, to the Guild socialist, is a system of bureaucratic tyranny. Guild socialism found its original exponents among members of the Fabian Society, particularly G. D. H. Cole, whose *Self-Government in Industry* (1917) and *Guild Socialism Restated* (1920) are the most authoritative books on the subject, Mr. S. G. Hobson, and A. R. Orage, the editor of the *New Age*. Originally, it was an attempt to re-capture the mediaeval independent guild system. Each industry was to be as self-contained as possible, and governed by its own craftsmen. Modern conditions, however, required national guilds, in order to control large-scale industry. The Guild socialists found

in trade unions the raw material of their self-governing corporations ; they believed that economic should precede political power, and that no real socialism could be attained till the workers first obtained control of their own crafts. Guilds, they thought, would be local and national, arranged on a hierarchical system, and the state would either act as the supreme co-ordinating authority or would disappear altogether, in favour of functional organisations.

The teaching of the Guild socialists, albeit most of them were Fabians, was Marxian in character. The class struggle, with the abolition of the wage system was placed in the forefront of their programmes. The Guild socialists, like the Fabians, were very active in spreading their ideas, especially among trade unions, and in 1915 founded the National Guilds' League, which, though small, had many influential members. The League worked in close contact with trade unions, in many of which it was successful in obtaining converts. After the Great War, when there was an acute shortage in housing, several building guilds were started to carry out building schemes on a co-operative basis. These were ultimately combined into a National Building League. which went bankrupt owing to the failure of its members to raise capital and to reckless expenditure. With the collapse of the National Building League, Guild socialism disappeared.

From the political point of view Guild socialism is important because it proposed to replace the state by a series of autonomous corporations of which government would be only one. The state would not be sovereign. It would have certain functions to perform of a political nature—defence, control of marriage and divorce, the prevention of crime and the care of children and defectives. A superior co-ordinating authority would be required which was above both the guilds and government : this might be either a " democratic supreme court of functional equity " or the " commune " which would have ultimately supreme powers of coercion. The Guild socialists exercise much ingenuity in their attempts to get rid of the state : but it always reappears in some form, as is inevitable. However much one may hate the state, one cannot get away from it. Writers may weave as many academic patterns of guilds, or corporations as they choose, but ultimately there must be a general voice somewhere. Guild socialism rests on the pluralistic view of sovereignty, but in spite of

autonomous guilds, it has to find some means whereby the community can express its will. The means may be the "commune" in name, but it is really the organ of the sovereign state in another guise.

Guild socialism is dead as a separate school of thought, but it has had a marked effect on socialist thought in both England and America, especially with respect to the administration of nationalised industries and industries brought under strict national supervision. Many others besides socialists recognise that joint representation of employers, technicians and workers is the best system of managing industry. On the political side, guild socialism gave a fillip to the growing school of thought which opposed the traditional ideas of the sovereignty of the state; but, by the irony of circumstances, it was through the corporative state, especially in Italy, which in structure is not unlike the guild community of Cole or Hobson, that the sovereignty of the state was reinstated. There can be no question that in the corporate state of Italy, the corporations, or guilds, do not usurp the state, nor do they split its power into atoms.

Syndicalism.—Syndicalism may best be described as revolutionary trade unionism. It is derived from the French word "syndicat," which means trade union. The movement developed in France, where it had a strong following in the years just preceding the outbreak of the Great War. Syndicalism started from the Marxian class war of the proletariat or working classes against the owning classes, or bourgeoisie. It also assumed that a revolution was necessary to bring about the socialist state. But it differs from other schools of socialist thought with respect to method. The method the Syndicalists favoured was the use of the trade union. The trade union, they thought, was a ready-made instrument of revolution; by continued agitation for better wages and shorter hours, trade unions had made the workers class conscious, and by more intensive organisation and the use of more effective weapons, such as sabotage, or destruction of machines, strikes, and the boycott, they could force their way from capitalism to collectivism. The syndicalists favoured a type of society not unlike that of the guild socialists in which each industry would be collectively managed and conduct the productive process according to the needs of the community. There would be no external compulsion: the syndicalists agree with

the anarchists in their conception of a stateless society, but none of them explains how the interests of society as a whole are to be served. Like other extremists, the syndicalists were more interested in destruction than construction.

Syndicalism was responsible for many strikes in France just before the Great War. It also had a strong hold in Spain and appeared in America in the organisation known as the I.W.W. (International Workers of the World). Local and general strikes, sabotage, and general persecution of capital were its chief practical manifestations. The Great War brought the movement to an end for the time being, but it reappeared in the post-war period of unsettlement. General strikes were called in France and Spain, and other countries; but the movement gradually declined. Russian communist organisations took away many of its supporters; also, the body which had originally sponsored it, the French General Confederation of Labour, changed its policy and co-operated with the French government and the newly-created International Labour Office. The French Confederation of Labour, in its early days, had to fight a hard battle for the workers, as French law was opposed to trade unions and strikes. Once Labour achieved unity and power it swung to left-wing tactics: then it realised that more effective work could be done by constitutional methods. In the dictatorship countries, Syndicalism, which is unpatriotic and anti-militaristic, finds no place, nor has the I.W.W. succeeded in displacing the older and more conservative American labour organisations. Politically, Syndicalism is, like Guild socialism, an attempt to disrupt the state: it rests on a theory of divided sovereignty, and, like Guild socialism, it has seen the rehabilitation of the sovereignty of the state with extreme emphasis in the widely divergent dictatorships of Italy, Germany and Russia.

5. EVALUATION OF SOCIALISM

Review.—As we have just seen, socialism has such a wide range of meaning that it is difficult to appraise it as a single system of thought. The common features of socialistic theories are the abolition of private ownership and the substitution in its place of some sort of collective ownership with communal control. But there are wide divergencies in respect to both these points of contact. Some socialists would collectivise only the instruments of production, distribution and

exchange; they would permit private ownership in other matters. Others would practically "communise" property. Most schools of socialist thought regard the state as essential to the creation and functioning of the collectivist commonwealth; others favour a series of guilds or corporations with no state. With respect to practical programmes, some are little more than radical social reformers; they believe in democracy, and expect that, in the normal constitutional course, socialism will evolve from the impact of popular pressure. Others desire the root and branch extinction of democracy, and its replacement by a dictatorship of manual workers. Some socialistic schemes are little more than the intellectual diversions of university teachers with insufficient work to keep them fully occupied; others are the issue of a burning sense of injustice, a passion for social regeneration, racial or personal animosity or an inflamed inferiority complex.

Value of Socialist Protest.—The approach to socialism accordingly must, to a great measure, depend on the personal equation. The degree to which one feels the need for root and branch reform, the acuteness with which one observes or feels social injustice, the animosity one harbours to those better off or more privileged than oneself, and perhaps, the passion one has for destruction, may determine the attitude one adopts to different phases of doctrine. But, whatever one's personal reactions, socialism can claim credit not only for bringing into prominence but also for driving into the public consciousness, the evils that have developed in the modern industrial system. There can be no question that unrestricted competition has been responsible for social evils. Nor can there be any doubt that competition leads to the concentration of money and power in the hands of a few, and that it weakens the working man as an individual. It also tends to squeeze out the "small man," the independent entrepreneur who is content to make a modest living in an unpretentious way. Money power is often brutal, and greed for gain sometimes appears to have no limits. A capitalist system of society is also a community of inequality, with hereditary privileges arising from rank, influence and wealth. It is also in some respects wasteful, both in men and material. And several other charges could be brought against it, according to the outlook of the critic.

The Chimera of Equality.—It must not be assumed,

however, that there is no answer to the socialist case. While capitalist society in theory weakens the working man as a unit, it is open to him to join with his fellow workers in protective associations, such as trade unions ; effective organisation may make the worker even more powerful than the capitalist. To the individualist, as we have seen, unrestricted competition may be a positive virtue, both economically and socially. Moreover, it may not be true to say that inequalities of wealth are wrong ; they may be symptoms of inequalities in personal force or ability. Equality, indeed, though one of the motives of early socialistic thought, is one of its most erroneous assumptions. There is no such thing as personal equality ; the social system is a composition of different units, different in physique, mental power, passions, temperament and a hundred other elements. It follows that any attempt to found a system of society on this element *alone* is unlikely to succeed. The *genus homo* or the human species would first have to be remade. Though communism presupposes equality, the Russian experiment, as we have seen, has merely substituted one type of inequality for another. Democracy, of the English system, on the other hand, provides a real measure of equality, equality before the established law. Such equality is practical ; it makes no pretension to personal equality, but provides the same justice for all.

Permeation of Socialist Theory.—The chief merit of socialism is that it has called attention to the need of the reform of the capitalist system, and the extent to which it has affected the common consciousness may be gauged from the fact that most of the conservative parties of to-day would be called socialistic by their predecessors of half a century ago. Social reform, however, is not the exclusive domain of socialism ; other political parties have also been active, and even more effective, in introducing social reforms. But there can be no doubt that the organised attack of socialist opinion has been an effective instrument in urging other parties to be active in social measures. Socialism, also, has been a powerful influence in municipalisation and common ownership of public utility services, so much so, indeed, that policy of this type is no longer regarded as distinctively socialistic. The socialist attack on private ownership in land and minerals has also had far-reaching results. Many not professedly socialistic now favour nationalisation of the land ; if any new country were

discovered and annexed by a modern democratic state it is doubtful if private ownership in land would be permitted. Private ownership of mineral rights is also generally recognised as wrong, and, but for the question of compensation, several modern democratic states would nationalise them. Further, an essential principle of several socialist types of thought, co-operative production or distribution, is now widely encouraged by non-socialist governments. Again, many modern governments undertake commercial activities directly; in India, for example, not only does government own and manage the postal and telegraphic system, and most of the railways, but it is actively engaged in commercial activities in respect to forests and the manufacture of quinine. Why, the socialist asks, should not government take over coal mining and manufacture of jute, cotton and the other commercial commodities of the country?

The Capitalist View.—The reply of the capitalist would be on the following lines. He would say that the abolition of private ownership and management from all production would lessen production because it would take away one of its chief stimuli. The capitalist gets better results than government because he is able to enjoy the fruits of his work. Supply and demand at present decide the course of production: under government management production would determine demand. The capitalist is constantly on the outlook either to create or discover new wants and meet them. New wants under a government regime would not be stimulated. It may be argued that new wants may well be dormant; on the other hand, diversification of wants adds considerably to the zest of life and is necessary for the progress of society.

The socialist, the capitalist would say, is over-optimistic in the matter of government management. Experience of government managed industrial concerns is not hopeful. It is admitted that matters of general concern such as the postal service should be communally owned and managed, also, perhaps, certain monopolies; but though government management may popularly be regarded as efficient, it must be remembered that the standard of efficiency is set in the absence of competition. Where governments have actually started competitive agencies, failure has been as notable as success. Government management will never be as efficient as private management, as it cannot offer the same prizes.

Government cannot offer anything equivalent to a partnership in a firm to a manager whereby the manager can enjoy a good part of the income made by his own efforts. Government, again, even though representative, is not answerable to shareholders and does not risk failure. In the case of failure of an enterprise, government would simply close down, without having had the economic stimulus of fighting against failure. Besides, the very vastness of the organisation of government means delays and lack of elasticity, known at present as "red-tapism," which might lead to a lessening of production far greater than the saving effected by collective control.

Departmentalism.—Another argument against collectivism, and one which makes a far wider appeal than to capitalists only, is that, in Herbert Spencer's words, "each member of the community as an individual would be a slave of the community as a whole." If all production and distribution were to be managed by government, a huge army of officials would be required. The extension of government activities leads also to a large number of bye-laws and regulations which tend to bring about a uniform level of work, of mediocre efficiency only. Individuality would have little scope. In official work, routine replaces individuality: "red-tape" replaces elasticity. Individual interests, both in government service and outside, are allowed play only in so far as they do not clash with the uniformity of the government system. Initiative would be repressed. Genius, to which progress owes so much, would be stifled, for genius is an exceptional thing, and finds little place in rules and regulations. Moreover, the attitude of the citizens would be lethargic acceptance of what government prescribed.

Some socialists, such as guild socialists, have realised that the bureaucracy essential to collectivism would either react badly on the citizens' mentality or would create a new tyranny. They accordingly tried to circumvent government control by guild management. But a change of name does not change facts. Big business combinations develop bureaucratic systems as well as governments: the bigger the combination, the greater the bureaucracy. In this respect the individualist position is very strong as contrasted with the socialist. Bureaucracy saps individual spontaneity, and responsibility. It has not the buoyancy or resiliency of private

management. Moreover, the fear of bureaucratic tyranny is no chimera. Departmentalism in some respects may be as grinding a tyranny as a dictatorship, and in a big organisation, departmentalism is essential.

The "Government Swing."—The capitalist would also say that the effect of collectivism on the worker would be bad. He would have security of tenure, and would work less than under a private employer. In Australia, for example, the government labourer is said to have the "government swing" of the pickaxe compared with the more agile swing of the private employee. What, the capitalist asks, would happen if the "government swing" were extended to all activities? On the other hand, the socialist, while admitting a possible loss in man power, would retort that the private employer drives his men too hard, and is far too prone to dismiss workers without adequate reason.

Official Tyranny.—The anti-bureaucratic argument has several other varieties. Departmental requirements, it has been said, do not always coincide with public needs. Departmental canons of excellence might not suit the public taste. Further, officialisation has a cumulative effect. Most government offices can make out a case for increased staff; and with increasing numbers of officials, the people would become the slaves of officials. The socialist might reply that officials, as the servants of government, are the slaves of the people. However true this may be in theory, it is far from the case in practice. Officials in any form of government wield great power, and if their numbers were very great they might become an empire within an empire.

Spread of Socialism.—The advance of socialistic ideas throughout the world has been so rapid, that in some senses it is true to say, as an English politician said many years ago, that now we are all socialists. Much in the earlier socialist programmes has either been achieved or absorbed in the policies of non-socialist parties. Old age pensions, accident, sickness and unemployment insurance, municipal ownership of public utility services, enlightened factory legislation, short working hours, holiday payment for manual workers, are all accomplished facts in modern countries or are in the forefront of party programmes. In England, a Conservative government has accepted the principle of nationalisation of mining royalties, which is only a short step removed from

nationalisation of the land. But there is a world of difference between advanced social reform programmes and the abolition of private ownership as such, and the substitution for democracy of a dictatorship of one class. The vast Russian experiment in collectivism, while attracting the support of left-wing socialists in other countries, has caused a revulsion not only against revolutionary socialism but against collectivism as a whole. As was inevitable, the Russian system has brought in its train a huge army of officials ; they form not only a dictatorship by themselves, but with the members of the communist party, a new aristocracy of power. The older socialists condemned wealth as a social incentive : in Russia wealth has been replaced by power, and independent observers incline to the view that, of these two incentives, wealth is the preferable. The lust for power is more callous, more cruel and more relentless than desire for wealth ; it is also more insatiable.

Effect of Russian Communism.—Russian communism has disproved several of the assumptions of the older socialists. It has demonstrated beyond question that private property of some kind is essential to the human being : life without it becomes meaningless. Not only have the communist leaders had to admit rights to private property, but they also have had to admit the unsocialistic system of payment by results. Piecework payment, opposed for many years by trade unionists in other countries, is now an established feature of Russian life. The earlier socialist slogan of "from each according to his capacity, to each according to his needs" has been replaced by the principle of St. Simon, "from each according to his capacity, to each according to his merit." The Russian communists have found that there is no such thing as equality, and their experience may be regarded as the end of the long struggle, marked at times by bitter ferocity, for the realisation of the French revolutionary slogan, liberty, equality and fraternity.

International Socialism.—Throughout its history, socialism has had a strong international flavour. The brotherhood of man was looked on as more important than citizenship of any one state ; hence most schools of socialist thought were anti-militaristic, anti-national and non-patriotic. When the Great War broke out, socialist leaders with no strong national affiliations, such as exiled Russians and Jews, were dismayed

to see their followers enter into the war with as much ardour as non-socialists; but after the war, the Russian military collapse gave them the opportunity for which they had long looked. In the post-war upheaval, communist propaganda found fertile fields, but as conditions became stable, nationalism and patriotism reasserted themselves, to the undoing of both communism and democracy in the countries where dictatorships were established. In democratic countries the effect of the Russian revolution was to split the moderate socialist parties into several groups. The old socialist parties, which half a century ago were regarded as extremists, had achieved many of their ends. The new socialist parties had to find fresh programmes, and their left wings split off and allied themselves to the Russian communist movement. There are now many communist parties throughout the world, and even they are splitting into right and left groups. Political experience shows that the conservatives of to-day may be the liberals, or even left-wing politicians to-morrow, and the fissiparous tendency of left-wing parties suggests that the only limit to extremist division is the complete abolition of the human race. Russian communism is now intensely nationalistic; but it has also a strong international side, organised to bring about communism in other countries. The theory underlying international communism is that no type of communism is safe unless capitalism is completely destroyed.

The Internationals.—The chief international organisations of socialism are known as the Internationals. The First International was established in 1864, under the leadership of Marx. It was composed mainly of English trade union elements, and German labour parties. The English trade unionists did not continue their support, and the First International broke up. The Second International lasted from 1889, when it was formed by a number of continental socialist parties, till 1914. It was an organisation of what would now be regarded as moderate socialist opinion. It concerned itself mainly with social legislation, such as the eight-hour day. The Second (or socialist) International also supported democracy, with universal adult suffrage. International socialist organisation was in abeyance during the war. When it was revived Russian communism had become a dominant force. Led by Lenin, the left-wing socialists or revolutionaries,

founded the Third (communist) International of which Moscow was the headquarters. Many socialist parties and groups in Europe joined this body, but most of them, alienated by Russian extremism, withdrew within a short time. They united to form the Vienna International, which later became the Labour and Socialist International, with headquarters at Zurich in Switzerland. This body is the lineal descendant of the Second International. Under the influence of the Second International, a body known as the International Federation of Trade Unions was created in 1903. Prior to the war this body claimed a membership of about eight million members, covering sixteen European countries and the United States, but with the split in the socialist ranks caused by the Third International, and the creation of dictatorships in Germany and Italy the International Federation receded to the background. Its headquarters used to be at Amsterdam; now they are in Paris. Trade unions representing individual industries, such as coal-mining and maritime transport, also used to have international organisations: these too have been broken up as the result of Russian communism and dictatorships.

6. THE TRUE END OF THE STATE

General.—Why does the state exist? This is one of the fundamental questions of Ethics and Political Science. The answers given to the question are manifold: each writer on the subject has his own solution. From the earliest days when thinkers began to speculate on civic life and conduct, attempts have been made to formulate a definite end for the state. Political Science is as old as Pericles, but the science of Pericles in most respects is very different from the science of to-day. History, the material of Political Science, is continually changing, and Political Science changes with it. Both the material of the science and the science itself are in a continuous process of evolution. History gives new experience and new experience implies new adaptations. The conditions of human life vary; facts change and conflict. Political Science deals with what was, what is, and what ought to be. To the change of facts is added the change of ideals. Conflicting facts and ideals cannot but lead to occasional confusion in a science in which the subjects are often with very great difficulty reducible to a single formula.

The Greek Idea: the State as an End in Itself.—To the ancients the state was an end in itself. Every detail of individual life was a matter of state control. The laws of the state related to the minutest particulars of everyday life. Individuals were not beings with separate personal rights ; they were mere parts of a state. The state was the supreme fact of life, and the efforts and actions of individuals had to flow into it just as a river flows into the sea. It must be remembered that the Greeks made no distinction between state and society. Now we tend to regard the state more as a means towards the realisation of an end than an end in itself ; this is based on a distinction latent in modern thought between state and society. Freedom again, to the Greeks, was not so much a political as a social matter. The political liberty of the Greeks made personal rights and interests completely subservient to the state, as exemplified by ostracism, an institution by which any one who was regarded as dangerous to the state was expelled from it. Such a political liberty is vastly different from modern political liberty. Aristotle, in distinguishing the various forms of government, divided them into normal and perverted, those with true ends, and those with false ends. Those with true ends existed, he said, for the well-being of the people as a whole ; those with perverted or false ends existed for the benefit of the governing class. False ends of this type have frequently been pursued in practice, though no state could exist with such a theory as its avowed basis. The whole course of history is marked by attempts of classes or sections to seize power for their own benefit. Up to modern times superior wealth or enlightenment has frequently enabled the higher classes, although relatively few in numbers, to guide the policy of the state to their own advantage. With the growth of democracy this tendency is rapidly disappearing ; in fact the lower classes, it is often said, are now seizing power for their own benefit.

Mistaken Views.—Even when we have established a definite and satisfactory theory of the end of the state, it is by no means easy to decide how far any given policy is true to that end. Self-interest often blurs the good of the community in practice, even when the state is universally admitted to exist for the good of the whole, and not for any part or parts. The end of the state, again, has frequently been regarded as something with which the state is not itself con-

cerned, at least not as an active agent. The end of the state is determined for it by an external power, such as the will of God or the forces of evolution. The state according to this view is an instrument in the hands of some force outside itself, in which the free-will of man has no determining power. The theocratic view of the state is an example. The Jewish theory was that the state existed to further the ends of the Church, both being the creations of the will of God. Modern theory regards the state as a human institution, not an imposition of some external power. Its ends, therefore, are human ends.

Types of "Partial" Ends.—Many theories of the end of the state are not so much false as partial. Writers, in their zeal to bring forward some essential ends of the state, have sometimes elevated partial into complete or final ends. This is particularly the case with writers of declared individualistic or socialistic tendencies.

1. **Order.**—Order or security we have already seen to be the central tenet of the individualistic school of thought. Though capable of a fairly wide interpretation, neither order nor security adequately represents the true end of the state. Security of person and property is indeed a primary essential for the well-being of society, but as a complete end of the state the theory rests on an unsound basis. Some, indeed, hold that the preservation of order is essential to the continuance of the present scheme of things. To preserve the present, they say, at least guarantees that the future will be no worse than the present. On the other hand, however, we live in a world of imperfection where not even the most optimistic can find every arrangement satisfactory. To exclude the possibility of progress, as this view does, is not only a mistaken view of man and society, but opens the way to retrogression. Man as a moral agent works towards definite ends, but this theory regards man as static.

2. **Progress.**—Progress cannot be regarded as an end. It is a process towards an end. We must determine the end in order to make progress possible.

3. **Happiness.**—Happiness has frequently been set down as the end of the state, particularly in the form of the greatest happiness of the greatest number. The refutation of this theory belongs more properly to the realm of ethics. The theory is now discarded, but, although unsound, it had a

profound influence on legislation, especially in breaking up the results of the *laissez-faire* theories. The theory itself, like the theory of *laissez-faire,* is individualistic. It regards society as merely an aggregation of units, each unit having so many feelings. Society, however, is an organic whole, not a mere sum of individuals. The theory again fails in the fact that although society is an organic unity, there is infinite diversity in the unity. No two individuals agree in their conception of happiness. There is no standard of happiness in the world, yet the theory would have the state judge what is greater or less happiness among the citizens. Happiness, further, is a very indefinite term. Happiness is not well-being. A pleasurable feeling in all the individuals of a given society is by no means a proof that that form of society is ideally perfect. Another objection to the theory is that the maximum happiness in any given society might coincide with a great deal of unhappiness for some—once granted that happiness can be measured.

As a rough expression of the ends of legislation this theory expresses valuable truths, and it deserves credit for the humanitarian legislation which it undoubtedly helped to bring about. Happiness is a natural aim : no one wishes to be unhappy. The theory is a common sense expression of the end of legislation, but as a complete expression of the end of the state it breaks down on closer examination.

4. **Utility.**—Utility has also been given as the end of the state. According to this view, every action of the government must be useful. As a rule every action is of use, but it must be useful for some end. Usefulness, like progress, implies something further. Utility confuses end and means.

5. **Justice.**—Justice, which has frequently been given as an end of the state, is too narrow. Abstract justice excludes other departments of human life—such as the economic or intellectual life. Justice is more a condition dependent on the realisation of the true end. Complete justice too involves absolute knowledge, which belongs only to God. If justice is too narrow, then morality, the Platonic notion of the end of the state, is too wide. The state can control only the overt actions of man. The dispositions and motives of the moral life are outside its scope. This theory is true insomuch as the end of the state must be ethical.

Others.—It would be easy to compile other formulæ of

the end of the state given by different writers or politicians. Many of them scarcely deserve consideration as they are frequently no more than the casual statements of practical politicians. In the modern world, for example, democracy is sometimes held to be the end of the state. Others, followers of Plato, say that the rule of one, or ideal monarchy, is best. There is obviously confusion here between the end of the state and its organisation : organisation, whatever it may be, exists for a certain end ; to call the organisation the end is to confuse means and end.

Other false or partial ends we have already dealt with. Liberty, a term with wide connotation, may be an end, but it is not the sole end. In other parts of this book we have seen how erroneous may be the ideas underlying certain aspects of liberty. The phrase Liberty, Equality, Fraternity, the catchwords of the French Revolution, has been given as an end, but its meaning is very indefinite. Equality we have dealt with in our analysis of communism and socialism. Fraternity, or brotherhood, is too vague a term to be of practical worth.

The Nationalist View.—One other statement of the end of the state requires notice, viz., the nationalist. One of the best representatives of this view is the German political scientist, Bluntschli. Not only does he clearly advance the nationalist view to the exclusion of all others, but, by reservations and qualifications, shows the inherent weakness of the theory. Let us examine Bluntschli's theory.

Bluntschli's Statement.—Bluntschli, after dismissing various theories as mistaken, gives his view in these words—"the development of the national capacities, the perfecting of the national life, and finally, its completion." He adds, as a qualification to his theory, "provided, of course, that the process of moral and political development shall not be opposed to the destiny of humanity." He goes on to say that "the life-task of every individual is to develop his capacities and manifest his essence. So, too, the duty of the state is to develop the latent powers of the nation and to manifest its capacities." The state has thus a double function, the maintenance of national powers, and their development: "it must secure the conquests of the past, and it must extend them in the future."

Criticism of the Nationalist View.—Bluntschli adopts

this statement of the end of the state in preference to the public welfare, which was the Roman view of the end of the state. He agrees that the Roman view is above criticism "if one regards the natural limits of the state, and especially the judicial order and administration, and if one avoids trespassing upon matters outside those limits, such as the free life of the individual and of religious communities." Public welfare is an indispensable element in the policy of every state, yet the expression is insufficient. In times of extraordinary crises the state has to risk its existence to save its honour. Belgium at the beginning of the Great War could have saved its citizens by accepting the conditions of Germany, yet Belgium preferred to fight for her honour. Bluntschli recognises that certain states by weakness or corruption have no right to continue in independent existence. No unprejudiced German or Italian, he says, can regret the destruction of the petty states which led to their fusion into more important wholes. Yet Bluntschli does not consider that public welfare covers such cases, and he enunciates his nationalistic theory to cover the defects of the other.

The chief difficulty of Bluntschli's theory is contained in his proviso "provided that the process of moral and political development shall not be opposed to the destiny of humanity." The destiny of humanity is therefore a necessary condition of his state end. The development of national capacities is justifiable only in so far as it does not oppose the destiny of humanity. Obviously therefore the national end is not a final end, but only a relative or conditional end. The destiny of humanity is the end.

In Bluntschli's theory it is evident that there is a narrower end and a wider end. This division really depends on the distinction between state and society, a distinction which is becoming more and more marked in the modern world. In the Great War, when one might have expected the nationalist theory to be at its maximum, it was the wider end of humanity about which we heard most. The fight of Germany *versus* the rest of the world was a fight of social and ethical, as well as of political ideals. The future of humanity was regarded as more important than the future of any state. This brings out the objection to the individualistic tendency of the nationalistic theory. We have seen already that a proper view of the individual implies others as well as the self.

The state, regarded, as in the nationalistic theory, as the individual writ large, is open to the same objections as John Stuart Mill's theory of individuality. National individuality may develop selfishly to the detriment of society as a whole. The nation state may become self-centred or eccentric to the exclusion of more universal principles of development. This does not imply that national characteristics—such as we understand by "Americanism"—are bad; national diversity like individual diversity gives a fuller meaning to the social whole; but national development which endangers the whole of society, as seen in the pre-war German development, is undoubtedly bad.

Professor Burgess's View.—In the modern world we are more and more tending to look beyond the boundaries of states for an ideal. Internationalism is gradually replacing nationalism. The distinction of the state and society as a whole is becoming more and more clear. The Greeks regarded the state as an end in itself: the ends of individuals or society had no place by themselves. The tendency in the modern world is the opposite, viz., to regard the state as a means. The state, however, is a necessary factor in social organisation, and as such it has essential functions. Professor Burgess, of Columbia University, New York, definitely separates the ends of the state into three distinct parts—primary, secondary, and ultimate. This division is very largely accepted in modern Political Science as giving the most satisfactory solution to a vexed question.

Strictly speaking there can be only one *end*, the ultimate end, but for purposes of exposition the tripartite division of Professor Burgess is most useful. The primary ends of the state are simply to secure the primary conditions of the ultimate end, which is the perfection of individuals and mankind as a whole, or simply, the free and full development of human life. This end may be realised in a world-state or among a humanity so perfect that state-forms are not necessary. As the human race is at present, individual states are necessary. The area of states is determined largely by the area which experience shows is compatible with self-government. The nation state must maintain order and security of person and property. This is essential before any progress to a higher end is possible. Stable government, giving

security from external attacks and internal disorder, is a prerequisite of moral advancement.

Once stable government is secured, progress is possible. This progress must first take place in the nation, where the state, while securing the primary essentials, must remove all barriers which stand in the way of the realisation of the highest type of life. The sphere of government in relation to the individual must be marked out. This will vary from state to state according as the primary ends have been achieved. The state will make room for the full and free development of the individual. The individual must be understood as the social individual living with others in a social whole. The independence of the state, leading often to much sacrifice of individual life, is justified from this point of view. It preserves its independence for the good of its subjects.

Conclusion.—Any expression of the end of the state, to meet such various conditions, must be very general. No better expression has yet been formulated than Aristotle's dictum, "The state comes into being for the sake of mere life: it continues to exist for the sake of the good life."

7. CLASSIFICATION OF GOVERNMENT FUNCTIONS

The enunciation of a vague formula of state ends is a very definite guide to giving a list of governmental functions. Government action means government interference, and we have seen the widely divergent views held by different thinkers on that point. To the divergence of theory is added divergence in practice. The extent and the effect of government action varies with the social and economic condition of different peoples. The growing complexity of political and economic relations makes it difficult to say what government activity is justified and what is not. Not only in the world as a whole, but in each state, conditions are changing rapidly, and political regulation is apt to follow the line of least resistance more than any preconceived theory of state ends. The tendency is for government to take over more and more control—to be more collectivist than individualist. It is difficult to foretell the direction and result of many modern movements. Modern governments work on the principle that interference is justified where government can predict the

effects of governmental action, and where it can also predict the likely effects if no government interference takes place.

General Considerations.—In classifying the functions of government certain broad lines of distinction are obvious, these lines being determined partly by a survey of the actual practice of existing civilised governments, and partly from the nature of the state itself.

1. **Fundamental Functions.**—First, there are the fundamental functions. These are functions which each government must undertake to ensure the existence of the state. They include the maintenance of security, external and internal, of person and property. They have been variously termed fundamental, primary, original, constituent, essential, indispensable or normal functions.

President Wilson's Classification.–Dr. Woodrow Wilson summarises these as follows :—

(1) The keeping of order and providing for the protection of persons and property from violence and robbery.

(2) The fixing of the legal relations between man and wife and between parents and children.

(3) The regulation of the holding, transmission, and interchange of property, and the determination of its liabilities for debt or for crime.

(4) The determination of contract rights between individuals.

(5) The definition and punishment of crime.

(6) The administration of justice in civil causes.

(7) The determination of the political duties, privileges, and relations of citizens.

(8) Dealings of the state with foreign powers : the preservation of the state from external danger or encroachment and the advancement of its international interests.

2. **Ministrant Functions.**—Secondly, there is the vast number of functions which, though not necessary to the existence of the state, are in practice undertaken by the majority of modern civilised governments. Dr. Woodrow Wilson lumps them together under the term ministrant. These ministrant functions vary from state to state according to the prevailing opinions and conditions of the people. Dr. Woodrow Wilson sums them up under the following heads :—

President Wilson's Classification.—(1) The regulation of trade and industry. Under this head he includes the coinage

of money and the establishment of standard weights and measures, laws against forestalling and engrossing, the licensing of trades, etc., as well as matters concerning tariffs, navigation laws, and the like.

(2) The regulation of labour.

(3) The maintenance of thoroughfares,—including state management of railways and that group of undertakings which we embrace within the comprehensive term "internal improvement."

(4) The maintenance of postal and telegraph systems, which is very similar in principle to (3).

(5) The manufacture and distribution of gas, the maintenance of water-works, etc.

(6) Sanitation, including the regulation of trades for sanitary purposes.

(7) Education.

(8) Care of the poor and incapable.

(9) Care and cultivation of forests and similar matters, such as the stocking of rivers with fish.

(10) Sumptuary laws, such as "prohibition" laws.

The extent to which the above list of functions is undertaken by government varies from country to country. So also does the type of control. State-railways, for example, are directly managed by the government; but government may control railways by letting them to private companies on stipulated terms or by stringent regulation.

Conclusion.—To sum up, it is clear that it is impossible to fix any definite line or interference over which government should not step. Circumstances vary so much from one country to another that what is regarded as justifiable interference in one might be justly resented in another. National exigencies, again, may lead to government interference in a way which few would approve of in normal times. In the Great European War, for example, government was accepted as the one managing agent in the vast complex of military, economic and intellectual life by individualist and socialist alike.

Some of the theories examined above, however unsound, have served their day and generation well, for example, the individualistic theory; but the police duty, as the chief function of the state, is now generally rejected. The furtherance of literature, the encouragement of art and invention are

now regarded as normal government functions; while the increasing complexity of social and economic life is demanding more and more a moderating authority. In spite of this, liberty is not diminishing, but growing. An increase in legislation does not involve a decrease of freedom; experience has amply demonstrated in the last century that legislation is necessary to remove barriers to progress. With the extension of the powers of the people in both local and central government, legislation merely expresses their will. Laws are largely self-imposed, a fact which surely is the realisation in large part of the ideal of liberty.

CHAPTER XXI

THE GOVERNMENT OF BRITAIN

1. HISTORICAL

General Remarks.—To understand the present form of government in the United Kingdom, the student must have a grasp of the historical conditions and institutions which have preceded it. No modern government has had a more continuous development than the British. At the present time, when dynasties have been driven out or have fled, when sudden revolutions have upset both political and social structures, the British constitution stands secure. Amid the shifting sands of reconstruction following the first Great War, the British kingship has remained as firm as a rock. The explanation of this lies in the gradual evolution of British political institutions and in the firm basis which these institutions have given to individual freedom.

The Anglo-Saxon Period.—The first noteworthy stage of development is the Anglo-Saxon period, prior to the Norman conquest. During this period England was divided into several independent kingdoms. After the Romans withdrew from Britain, the new conquerors, the Jutes, Angles, and Saxons established their own forms of government. The Roman organisation did not last as it did in France. The Teutonic invaders gathered together in communities similar to those they had left in Germany. But their life was largely

a life of war. Not only had they to defeat the indigenous Britons, but the kingdoms had a long struggle for supremacy among themselves. From this arises the characteristic nature of the Anglo-Saxon kingship. The king originally was a war leader. He was both king and general. At first there were as many kings as there were armies, or rather war-bands. As the stronger armies subdued the weaker many of the smaller "kingdoms" disappeared, till at last one of the kingdoms, Wessex, the kingdom of Alfred the Great, became supreme over England. As far as we can judge, the Anglo-Saxon kingship was partly hereditary and partly elective. It was also sacred and patriarchal. Kings were elected by the chief men of the tribe or kingdom, but election was confined as a rule to one family, which was looked on as sacred. As the king was also war leader, the king elected had to be an able general, so that the eldest son was not necessarily elected to succeed his father. The king acted in consultation with the elders. He was military leader, final executive authority, and also final judge. His judgments, or "dooms," were both laws and judicial decisions.

The Witenagemot.—Associated with the king was the Council of Wise Men or Witenagemot. This Witenagemot is the ultimate origin of the modern Parliament of the United Kingdom. The Witenagemot had no regular constitution. It was summoned at the king's will, and it was composed of the chief men of the time—the king's relations, the chief officers of the government, the leaders of the army, the church dignitaries, and the greater landed proprietors, or thegns. There was no election : the members were summoned by the king. The Witenagemot met at irregular intervals, about three or four times a year. It made laws, imposed taxes, made appointments, and also heard cases. It elected the king and could also depose him, so that from the earliest days in English constitutional history the head of the executive was to some extent responsible to the legislature. The actual powers exercised by the Witenagemot depended largely on the king. A strong king acted largely by himself ; but formal meetings of the Council of the Wise Men kept alive at least the idea of constitutional government.

Local Administration.—Another permanent contribution of the pre-Norman days to the English government was the system of local administration. The early communities were

organised in townships, boroughs, hundreds, and shires. The township was the smallest unit of administration. It comprised the village, with its arable lands, woods, etc. Its central organisation was the town-moot, or town meeting, which was attended by all freemen in the area. The chief officer of the town-moot was the reeve. The borough was similar to the township, only its area was wider. The hundred was a collection of townships. There was a hundred-moot, which is important historically as it contained the germs of representative government. It was composed of the reeve, some clergy, and the "four best men" of each township and borough. The chief official of the hundred was the hundred man, who was sometimes elected and sometimes nominated by the chief local landowner. The hundred-moot met once a month, and transacted civil, criminal, and ecclesiastical business. Above the hundred was the shire, the head of which was the ealdorman, who was appointed by the king and Witenagemot. Under him was the shire-reeve (sheriff), who later became the chief official. The shire-moot was presided over by the ealdorman, or by the bishop, the bishop's diocese or area being the same as that of the shire. The shire-moot theoretically was composed of all the freemen of the shire, but they usually acted through representatives. The reeves as a rule acted as the representatives. The shire-moot was really a mixed assembly—partly representative, partly primary. It transacted shire business, civil, criminal and ecclesiastical.

The Norman Conquest.—With the Norman Conquest a complete change came over the administrative system in England. The feudal system had developed during the earlier period and now the feudalisation of England was complete. The king became supreme. Local liberties and privileges were abolished. All the administration was centralised in the king. The ealdorman of the shire was abolished and his place taken by the shire-reeve or sheriff, who was the direct agent of the king. William the Conqueror confiscated large tracts of land, and gave them to Norman nobles on the feudal basis. The local feudal landlords or barons administered their own areas. The townships, boroughs, and hundreds lost their previous powers. Baronial courts took their place.

The centralisation of authority in the king made a more complete organisation of the central government necessary.

William organised two great departments—the department of justice and the department of finance. These were presided over by members of the royal family, who had the services of expert officials. The head of the department of justice was the Lord Chancellor ; the head of the finance department, or Exchequer, was the Treasurer. The principal officials of these departments formed one body of officials, viz., the Permanent Council. They were known as barons of the Exchequer or as Justices, according to their duties. These departments form the foundation of the modern departments.

The Great Council.—King William claimed to be king not by conquest, but by succession and natural right. Accordingly, he tried to follow the customs of the people. He was elected king in accordance with ancient custom. He continued the Witenagemot but under a new name and with a completely altered character. The new Council was known as the *magnum* or *commune concilium* (Great, or Common Council). The membership was regulated according to feudal usage. The tenants-in-chief of the king, along with the chief ecclesiastics (archbishops, bishops, and abbots) were entitled to attend. Latterly the ecclesiastics attended not because of their position in the church, but because of their tenure of land. Land ownership was the basis on which the Great Council was constituted. From the Great Council, in the course of time, developed the modern Parliament, Cabinet and Courts of Law.

The Permanent Council.—The Great Council is the direct forerunner of Parliament. It met three times a year, but, as the work of administration is continuous, the king found it necessary to choose an inner council of permanent officials—leading ecclesiastics and barons : this was the Permanent Council. It had no fixed composition. The king chose those whom he considered most fitted to give advice and carry on the work of the realm. The Council was smaller than the Great Council, and was always at hand to advise and to perform administrative work. Its powers were practically the powers of the king : it was the central legislative, executive and judicial body of the realm. It was the instrument for carrying out the king's will.

Development of the Permanent Council.—The Permanent Council gradually split up into smaller bodies, and these ultimately superseded the parent body. In course of time it

became the Privy Council, and ultimately the Cabinet. The king used to summon to the Council lawyers, and others specially qualified for particular kinds of work. The lawyers and those whose duties were mainly financial gradually split off from the rest of the Council and formed distinct courts, according to the particular type of function they performed. Thus there arose : (*a*) The Court of the Exchequer, which had jurisdiction over Crown finances ; (*b*) The Court of Common Pleas, which dealt with civil cases between subject and subject ; (*c*) The Court of the King's Bench, the nominal president of which was the king. This court had jurisdiction over cases not assigned to other courts ; (*d*) The Court of Chancery, the president of which was the Chancellor. It dealt with equity cases. These judicial committees were co-ordinate in authority. Appeal lay from them to the King in Council.

Development of the Great Council.—In the meantime the Great Council was slowly developing into what it finally became, viz., the English legislature. After the reign of William the Conqueror the course of constitutional growth was marked by only minor incidents till the Great Charter of 1215. The first incident of note was the guarantee of the liberties of his subjects in 1100 by King Henry I. This proclamation was issued as a result of the arbitrary and unjust administration of his brother, William II. (Rufus). In it he promised to observe the laws of King Edward (the Confessor), as amended by William the Conqueror, and to give justice to all. Henry I. reorganised and strengthened the administrative system of his father : hence he has been called the father of the English bureaucracy. But he also gave liberal charters of self-government to towns such as London ; thus also he is the father of English municipal government. Henry I.'s organisation was still further developed by Henry II., who had to clear up the legacy of anarchy left by King Stephen. Henry II. is notable for having introduced the jury system, for having appointed professional administrators instead of land owners as sheriffs, for his introduction of scutage or money payment in place of military service, and for his frequent summoning of, and the definite position he gave to, the Great Council. His successor, Richard I., still further strengthened the monarchy, but the next king, John, represents the extreme limit of royal power. Unpopular with

all classes because of his territorial losses in France, and especially unpopular with the barons and clergy for his high-handed treatment of them, he had to concede to these barons and clergy, who also represented popular feeling, the famous Great Charter of 1215.

The Great Charter.—The Great Charter contained sixty-three clauses, many of which were demands for the redress of temporary and minor grievances. Many of its clauses recount the feudal rights of the barons and demand redress for wrongful exactions. One clause, for example, demands that the king's court shall not encroach on the baronial courts. The clauses which are of first importance in English constitutional history are those dealing with the general government of England. There is to be no taxation without the consent of the Great Council, which is to consist of all barons, who are to be summoned by individual writs, and of all smaller tenants-in-chief who are to be called by a general summons by the sheriff. The Great Council thus is a purely feudal body, for the sub-tenants and townspeople were not taken into account. A large number of clauses deal with the administration of justice. The royal courts are to be permanently situated in Westminster ; no man is to be tried or punished more than once for the same offence ; no one can be kept in prison without trial, and the trial must be within a reasonable time, before a jury of his equals. Other clauses deal with the freedom of the church and the means proposed to make King John observe the Charter.

The Representative Idea : The Rise of Parliament.—King John, in 1213, had tried to secure the support of the middle classes by summoning four "discreet" men from every shire to a Council (which never met) at Oxford. The interest of this attempt of John is that it revived the representative idea which had existed in the old shire-moot, but had been lost in the centralised feudal monarchy of the Normans. The practice of electing assessors for property valuation prior to tax assessments, and of electing jurors for criminal cases before the King's Court had kept the idea alive, but it was the affirmation of the principle of taxation-by-consent in the Charter that gave the first real impetus to representative government. The historical stages of development are marked by (1) Simon de Montfort's Parliament, in 1265, and (2) Edward I.'s Parliament of 1295. In Montfort's Parlia-

ment the barons, clergy, and four knights from each shire were summoned. He also summoned two citizens from each city and two burgesses from each borough. This was the first time that the representatives of towns were brought into touch with the old feudal nobility. To Edward I.'s "Model" Parliament of 1295, about 400 members were summoned. Along with the high ecclesiastics, the earls, barons and knights, citizens and burgesses were summoned as in Montfort's Parliament, and the lesser clergy were represented by proctors. Both Montfort and Edward I. summoned these parliaments as temporary political expedients, but after Edward's time the system became a normal one, and in the next century Parliament assumed its modern form. As in contemporary France, there were three distinct "estates" or classes—the nobles, clergy, and commons. In France these estates deliberated separately, in three houses. In England the estates originally decided their respective amounts of subsidy separately; but they never definitely split into three chambers. Gradually the lesser clergy withdrew from Parliament and formed a separate ecclesiastical body of their own, known as Convocation. The greater clergy and the greater barons combined and formed a single House, the House of Lords. The lesser barons, the knights, citizens of the towns and burgesses joined and formed the House of Commons. Thus, by the middle of the fourteenth century, Parliament was divided into the House of Lords and the House of Commons, the form that it still preserves.

Growth of Power of Parliament.—During the century following the Model Parliament, the fourteenth, the powers of Parliament became more definite. Two things in particular were established—first, the principle that the crown could not impose taxes without its consent, and second, that Parliament had the actual power of imposing taxes. These financial powers are important, as from them grew the definitely legislative powers of Parliament. As a legislative assembly, Parliament was at first only advisory. Laws were made by the king with the *assent* of the magnates and at the *request* of the commoners. But Parliament seized the financial power, and the assertion of its power in course of time secured for it the initiative in legislation, leaving the power of veto or assent with the king. In Edward II.'s reign, the king, earls, barons, and commons (i.e., king, lords,

and commons) were theoretically looked on as equal in legislative power; but as yet actually the Commons had no power of initiation. They were only "petitioners." In Henry VI.'s reign the Commons secured the right of initiating legislation equally with the Lords.

Tudor and Stuart Periods.—During the Tudor and Stuart periods England passed from absolutism to constitutional government. The process was marked by a severe struggle, culminating in the death of one king and the expulsion of another. But, in spite of the Great Rebellion and the Revolution, the continuity of development was not broken. There was no sudden and complete change as in the French Revolution. There were many notable events and notable laws and documents, but, gradually and securely, the actual machinery of government moulded itself according to the needs of the nation, without any sudden break.

The Tudor Period.—The Tudor period, from 1485-1603, was a period of absolute rule. The absolutism was both necessary and popular. The many wars of the time required strong executive government, and they also raised the national spirit. The Tudor monarchs were strong; they acted at times in the most absolute manner, but they were popular. Their executive government prevented the rapid development of Parliament. Nevertheless much internal legislation was passed, and the general progress of that age is marked by the fact that the Elizabethan period was the most prolific in literature in the whole range of English history.

The Stuart Period.—The Tudor tradition of executive government, with disregard for Parliament, was carried on by the first two Stuart Kings—James I. and Charles I.—but the struggle between the royal power and Parliament now became acute. James I. came from Scotland and did not understand the spirit of the Tudor monarchy or of the English people. He was a believer in the "divine right" of kings. Moreover, the need for strong central government had passed. During his reign he had five Parliaments with each of which he quarrelled. He disregarded the legislative power of Parliament by issuing royal proclamations which had the force of law. He exacted taxes without the consent of Parliament, which had come to regard itself as the source of supply, and during his reign it insisted on the formula "redress before supply." James laid the basis for the

troubles of his son, Charles I., who dissolved his first Parliament for being over-critical and the second because it threatened to impeach his minister, Buckingham. His third Parliament presented the famous Petition of Right, one of the most important of English constitutional documents. For a long period—eleven years—Charles ruled without a Parliament. In 1640, he summoned, and dissolved, the Short Parliament. The Short Parliament was followed in the same year by the Long Parliament, which drew up the Grand Remonstrance. In 1642, civil war started, and in 1649 Charles I. was beheaded. After the Rebellion came the Commonwealth, with the Instrument of Government as a written constitution, the earliest constitution of its kind in Europe. From parliamentary government England passed again to absolutism under Cromwell. From the Cromwellian system the country gladly reverted to monarchy. Charles II. did not revive the unpopular institutions of his father and grandfather, but towards the end of his reign, he felt himself more powerful, and in many cases acted on his own initiative, without the consent of Parliament. The culmination of the struggle was the Revolution, which caused the abdication of Charles's brother and successor, James II. The Revolution was followed by the Declaration of Right and the Bill of Rights, two of the fundamental documents of the English constitution.

Development of Parliament.—During this long period the House of Lords and House of Commons were gradually assuming their present form. In the fourteenth century the composition of neither house was clearly defined. At first, only the lords spiritual and lords temporal who received a writ could attend the House of Lords. The issuing of the writ depended on the royal will. Gradually the principle came to be recognised that a lord once summoned was always summoned, and that on his death his eldest son was summoned in his stead. In the course of time the temporal lords became more important than the spiritual lords (archbishops, bishops, and abbots). They were superior in numbers, and the principle of heredity (which of course did not apply to the spiritual lords) kept up their numbers. By the closing of the monasteries, too, the abbots were excluded. At the beginning of the Tudor period there were about three hundred members of the House of Commons. By a statute of 1430 the privilege of

election was confined to freeholders in counties whose land had a yearly rental of forty shillings (now equal to about sixty pounds). This system continued till the Reform Act of 1832. In the towns or burghs there was no uniform system. In some, all ratepayers had the right to vote ; in others, only a few could vote ; in others, election was by guilds or by landholders. The representation in the House of Commons increased largely. In Elizabeth's reign above sixty-two new boroughs were added. Wales was also added to England for purposes of representation. The number of sittings became more frequent, and the permanence of Parliament was more fully recognised. Parliamentary Journals were started. The most marked feature of all was the independence of sentiment shown by the House of Commons.

Powers of The King.—In spite of these developments in its constitution, the Tudor and Stuart kings exercised a very effective control over Parliament. By the issue of proclamations, nominally with the advice of the Privy Council, they were able to command a source of legislation independent of Parliament. Some of them also claimed the rights to dispense with or to suspend laws (the Dispensing and Suspending Powers). Parliament voted supplies, i.e., provided money for the Crown, but the Crown had large independent sources of revenue in the Crown revenues and the taxes which were devoted permanently at the beginning of a reign. Parliament was also at a disadvantage by having irregular meetings, by the Crown managing the elections in its own interest, and by the domination of its business by the chief officials.

Council Government.—But the most notable of all features of government during the Tudor and Stuart periods was the government by Council—in fact, this period has been called the period of government by Council. The chief of these Councils was the Privy Council, which, as we have seen, was an inner body of the Permanent Council. The Permanent Council became too large for its purpose, and the king chose a few members of the Council for private advice. The members of the Privy Council originally were members of Parliament, but they were not responsible to Parliament. The members of the Council were mainly laymen. At first the Council was advisory, but with the first two Stuart kings it came to control all the administration ; it represented the king. It supervised and controlled administration, and issued

proclamations and ordinances. With the king as president it was also the supreme tribunal. As such, it was mainly appellate in character, though it could assume original powers if it so wished. Its judicial functions were the direct outcome, through the Permanent Council, of the judicial prerogatives which belonged to the earlier kings when sitting in their Great Council. The judicial functions of the Privy Council have remained to the present day ; its executive functions have long since passed to the Cabinet or become purely nominal.

Many other Councils arose from the Privy Council. Two of them became notorious in the struggles of Crown *versus* Parliament—the Court of the Star Chamber, which arrogated to itself the judicial functions of the Privy Council, chiefly for the trial of important persons, whose trials could not be entrusted to the ordinary courts, and the Court of High Commission. These Courts or Councils gave considerable impetus to the anti-royal movement. Other Councils were the Council of the North and the Council of Wales.

Early 17th Century.—At the beginning of the seventeenth century the English Parliament was structurally the same as it is to-day. Some of the fundamental principles of the modern constitutional system had also been established. The chief of these was the legislative supremacy of the King, House of Lords and House of Commons, or, technically, the King-in-Parliament. The gradual loss of power by the Crown, the gradual rise in importance of the House of Commons as compared with the House of Lords, were the chief developments of the succeeding centuries. The chief landmarks in the rise of the House of Commons were the Septennial Act of 1716, which ensured long and regular sessions ; the complete financial control of the House, culminating in the Parliament Act of 1911 ; the extension of the franchise, which made the House of Commons a real organ of the popular will ; the predominance of Walpole, the first Prime Minister, and the rise of the Cabinet with its responsibility to the House of Commons alone ; the Union of Parliaments between England and Scotland in 1707 ; and the Union of Great Britain and Ireland in 1801. The scope of each of the Houses was extended, but these unions made no material difference to their constitutional position.

The Franchise.—Till 1832, when the First Reform Act was passed, the House of Commons represented only the

higher classes. As yet it was not a popular house. By the five Reform Acts of 1832, 1867, 1885, 1918 and 1928 the whole basis of representation was changed, so that now the British Parliament rests on an electoral basis very near to general adult suffrage. The general system of the franchise is mentioned later.

The Cabinet.—We have seen how from the Great Council arose an inner council, the Permanent Council, and how from that inner council arose another inner council, the Privy Council. These smaller or inner councils arose from the same cause—the need of unity and privacy in the despatch of public business. Large councils are useless for executive work. They lack unity and quickness. As soon as the councils became too large, inner councils were formed. The Privy Council, like the other councils, became too large to serve its purpose. Its membership was not only indefinite, but the title "Privy Councillor" was conferred on individuals as a mark of distinction. From the Privy Council arose another inner council, which in course of time became the central fact of English political life. That body was the Cabinet.

Its Development.—The immediate predecessor of the cabinet was the "Cabal" of Charles II. Charles found the Privy Council too large for the conduct of public business, and selected a few leading men, usually called his "favourites," as an inner secret council. As far back as Henry III.'s time there had been similar favourites, but Charles II. definitely chose the "Cabal" as his Council for the sake of "secrecy and despatch" in public business. The name "Cabal" was taken from the first letters of the names of the favourites (Clifford, Ashley, Buckingham, Arlington, and Lauderdale). They met in a small room, or "cabinet"; hence the name cabinet, which was given at first in derision. At first the cabinet was chosen by the Crown and had no authority apart from the Privy Council, but latterly it completely superseded the Privy Council save for its judicial functions.

The growth of real power of the cabinet dates from the rise of political parties in England. This subject has already been discussed in connection with party government. Under William III., the cabinet contained members of both the political parties of the time (Whigs and Tories). William found that he could not rule with such a cabinet; so he chose a cabinet composed of the leading members of only one party,

the Whigs. This was the first cabinet of the modern type. The development of the present cabinet was furthered by the system which grew up under the first Hanoverian king, George I. Knowing no English and being unacquainted with English political life, George I. left matters largely in the hands of Walpole, who may be called the first English Prime Minister. At the end of the eighteenth century the following principles of cabinet government had been established: (*a*) that the members of the cabinet should be members of either the House of Lords or House of Commons; (*b*) that they should hold the same political views, i.e., be members of the same political party; (*c*) that they should command a majority in the House of Commons, i.e., be members of the party-in-power; (*d*) that they should have a common policy; (*e*) that they should be responsible to the House of Commons as a body, i.e., that they should resign in a body if the policy of any minister were defeated in the House of Commons; (*f*) that they should all be subordinate to the Prime Minister.

These are substantially the principles of modern cabinet government. During the first Great War an inner "War Cabinet" of three or four members was formed. Party differences largely disappeared, and a coalition ministry was formed representative of all parties. The supporters of the coalition practically became a party by themselves, so that the system of a party-in-power continued. The Prime Minister, too, went outside the Houses of Parliament for members of his war ministry; but these ministers sought election as members of the House of Commons as soon as opportunity offered. With the disappearance of the Coalition government after the dissolution of Parliament in 1922, the normal working of the cabinet was resumed.

2. THE PRESENT SYSTEM OF GOVERNMENT IN THE UNITED KINGDOM

The British Constitution.—The British constitution, as we have already seen in the chapter on the Constitution, is flexible and is the only example of its kind now in existence. There is no definite document known as the British constitution; nevertheless the constitution exists. It is made up of many elements. First, there are documents, some of which have been passed as laws by the ordinary legislative processes, such as the Bill of Rights, the Act of Settlement, the Habeas Cor-

pus Act, the Libel Act, the Reform Acts, the Septennial and Quinquennial Acts, the Elections Acts, the Parliament Act of 1911, the Government of Ireland Act, 1920, the Irish Free State (Agreement) Act, 1922, and the Statute of Westminster, 1931. There are also summaries or statements of constitutional practice, such as Magna Charta and the Petition of Right. Second, there is a vast amount of common law material, matters of legal precept or of custom, written or unwritten. Third, there are treaties and international agreements which are binding on the British government. Fourth, there are the conventions of the constitution, that is, understandings or practices which have grown up gradually, but which have never been embodied in statute law. As a flexible constitution, the constitution can be amended by the ordinary process of legislation. There is no distinction, save in content, between constitutional and ordinary laws.

The Legislature.—The supreme legislative power in Great Britain, indeed in the British Empire, is vested in the King-in-Parliament, that is, the King, House of Lords, and House of Commons. Parliament is summoned by the writ of the Sovereign issued on the advice of the Privy Council, at least twenty days before its assembling.

Parliament consists of two Houses, the House of Lords and the House of Commons. The House of Lords is one of the oldest second chambers in existence. It has changed very little in its constitution since its origin, though several attempts have been made in recent years to alter it. Its composition and numbers have changed. There are at present five groups of members—1. Princes of the Blood Royal. They have technically the right to attend; actually they do not attend. 2. Peers who sit by hereditary right. These include three classes—(*a*) English peers, the creation of whose peerage dates before 1707 (the Union of Parliaments between England and Scotland); (*b*) peers of Great Britain, created between 1707 and 1801 (the date of the union with Ireland); and (*c*) peers of the United Kingdom. Peers are created by the King, on the advice of the Prime Minister. Peerages, save law peerages, are hereditary. Every peer can sit in the House of Lords in virtue of his peerage, whether he be British born, colonial born, or Indian born. Peers are of five grades—duke, marquis, earl, viscount, and baron. 3. Scottish peers, of whom sixteen are elected for the

duration of Parliament. 4. Irish peers, twenty-eight of whom are elected for life. Irish peers may sit for English (not Irish or Scottish) constituencies as members of the House of Commons, whereas Scottish peers or peers of the United Kingdom cannot become members for any constituency. 5. Peers who sit by right of office. These are not hereditary. Of these there are two classes—(*a*) The Law Lords. The House of Lords is the highest court of appeal in England, and by special Acts provision is made for the creation of a number of Law Lords. These are always eminent lawyers. They are presided over by the Chancellor for the conduct of legal business. (*b*) The Lords Spiritual—the archbishops and certain bishops of the church of England. The Archbishops of Canterbury and York, and the Bishops of London, Durham, and Winchester are always members. Twenty-one other bishops are members, in order of seniority.

Members must be at least twenty-one years of age; they must not be aliens, felons, or bankrupts. If a peer dies, his successor must become a member of the House of Lords. If he happens to be a member of the House of Commons before he succeeds to the peerage, he becomes a member of the House of Lords when he succeeds to his peerage, whether he wishes or not.

The Electorate.—The House of Commons consists of members representing county, borough, and university constituencies in Great Britain and Northern Ireland. The franchise arrangements used to be very complicated, but they have been simplified by the Representation of the People Act, 1918, and the Representation of the People (Equal Franchise) Act, 1928. The Act of 1918 revised and extended the previous franchise law; several millions of new voters were added, and women were first admitted to the franchise by it. The 1928 Act, which covered local government as well as Parliamentary elections, amended and extended the provisions of the 1918 Act, its special feature being the admission of women to the franchise on the same terms as men. The qualifications for the franchise are now as follows:—Any person is entitled to be registered as a parliamentary elector who is twenty-one years of age, and is not subject to any legal incapacity. Every elector must have a residential or business qualification, or must be the husband or wife of a person having a business-premises qualification. To have

a residential qualification, a person must actually inhabit the premises ; in other words, he must have his regular home in the constituency, and a person is not registrable as an elector unless he has resided in the constituency for a qualifying period of three months. The business premises qualification arises from the occupancy of business premises of the annual value of not less than ten pounds. There is also a university franchise, the qualification for which is that, before registration as an elector, a person must be of full age, and have received a university degree, or, in the case of women, the equivalent of a degree.

Every voter must be registered, and every registered elector may vote at an election. No person may vote at a general election for more than two constituencies. The "plural vote" used to be allowed, that is, an individual could vote in as many constituencies as he wished, provided he held the necessary electoral qualifications. According to the 1928 Act, if a person votes in two constituencies, in one of those he must have a residential qualification ; in the other he must have a different qualification, and each vote must be recorded in a different constituency.

Two registers of electors are prepared every year (one only in Northern Ireland), the expenses being met half by the central government, and half by local funds. University registers are kept by the universities and a fee not exceeding one pound may be charged for registration. In university constituencies having more than one member, proportional representation (each elector having one transferable vote) holds. All elections, at a general election, are held on the same day, save in certain scattered constituencies. Previously, elections were on different days, a fact which enabled plural voters to vote in various constituencies. Absent voters are allowed, under certain conditions, to vote by proxy.

The basis of representation in Great Britain is one representative for every 70,000 of the population, and one for 43,000 in Northern Ireland. The total membership of the House of Commons is 615, including thirteen members from Northern Ireland. By the Representation of the People Act, 1918, the numbers were raised from 670, as established in 1885, to 707. The reduction in numbers was due to the establishment of separate legislatures in Ireland.

No one under twenty-one years of age can be a member of Parliament. Ministers of the Church of England, the Church of Scotland and the Roman Catholic Church are ineligible for membership. Government contractors, sheriffs, returning officers in the localities in which they act, are also ineligible. English peers and Scottish peers cannot become members, though non-representative Irish peers are eligible. Aliens, bankrupts, lunatics, felons, idiots and persons under age have no vote. Peers also have no vote. Members of the House of Commons, other than those who have paid posts as Ministers or as officers of the King's household, are paid £600 per annum. Members of the House of Lords are not paid.

Electoral Procedure.—A new parliament means a new House of Commons. Dissolving parliament means dissolving the House of Commons and holding new elections. The abbreviation M.P. (Member of Parliament) applies only to members of the House of Commons. There are no elections for the House of Lords, save for "representative" peers. Parliaments are dissolved and summoned by the King. Election writs are issued by the Chancellor of Great Britain to returning officers, who conduct the elections according to the Ballot Act of 1872. The returning officer gives notice of the day and place of election. On the election day candidates are nominated, and, if there is no contest, are declared elected. If there is a contest a polling or voting day is fixed. The voting is by secret ballot. All elections are now on the same day, save in constituencies where it is physically impossible for the people to vote on one day. After the counting of the votes the writ of election is endorsed with a certificate of election by the returning officer and sent to the clerk of the Crown in Chancery.

The expenses of election to candidates are sometimes borne by party funds, sometimes the candidate has to pay them himself. At one time a candidate could expend as much as he wished during the election ; but elections are now regulated by the Ballot Act and the Corrupt and Illegal Practices Act of 1883. These Acts prevent as far as possible bribery and the exercise of wrong influences over voters. Seven kinds of bribery are set forth, with heavy penalties. A sliding scale of election expenses, according to the type of constituency,

is laid down, and candidates must have a responsible agent who keeps an account of all the candidate's expenditure, and sends it within a given period to the returning officer.

Duration of Parliament.—Until 1911 the maximum duration of a parliament was seven years. The Parliament Act of 1911 fixed the period at five years. Parliament as legislative sovereign could extend itself as long as it pleased, but only during the War, when it was not considered advisable to hold elections, did it extend the period.

The quorum of the House is forty and is decided by a curious procedure. If there is no quorum, an hour glass on the clerk's table is allowed to run its course (two minutes), and if at the expiry of the two minutes there still is no quorum, the sitting adjourns.

Committees.—To help in the transaction of business, there are committees of five kinds—(1) A committee of the Whole, (2) Select committees on public bills, (3) Sessional committees, (4) Standing committees on public bills, and (5) Committees on private bills. A committee of the Whole is simply the whole House presided over by the Chairman of Committees instead of by the speaker, with special, less formal rules for discussion. When the subject is the provision of revenue, the committee of the Whole is known as the committee of Ways and Means ; when the subject is appropriations of revenue to the heads of expenditure, it is known as the committee of Supply. Select committees consist of fifteen members, selected by the House, or, more usually, by a Committee of Selection representative of all parties. Select committees investigate, and report on given subjects. They take evidence, keep proceedings, and make their report, after which they automatically cease. When select committees are appointed for the whole session, such as the Committee of Selection, and the Committee on Public Accounts, they are known as sessional committees. Standing committees are appointed to save the time of the House. They consist of some sixty to eighty members, nominated by the Committee of Selection. The chairman is appointed by a smaller committee, or "panel," nominated by the Committee of Selection. All bills, save money bills, private bills and bills for confirming provisional orders must pass through Standing committees, unless the House otherwise directs. Standing

committees are approximately of the same party composition as the House. Committees on private bills are appointed in a similar way to consider private bills. They usually consist of four members of the House and a disinterested referee as chairman.

Organisation of Parliament.—The Houses of Parliament are situated in Westminster, London. The annual session of Parliament used to extend from the middle of February to about the middle of August, but since the first Great War, owing to the pressure of business, the session has become longer. Both Houses are summoned together, but they may adjourn separately. The Crown cannot compel either to adjourn. Each session ends with a prorogation to a specified date.

The opening of Parliament is accompanied with great ceremonial, much of which is unintelligible save on historical grounds. The members assemble first in their own House. Then the members of the Commons proceed to the House of Lords, where the Lord Chancellor informs them that they may proceed to the election of a Speaker. They elect a Speaker, then return to the Lords, where the Speaker's appointment is sanctioned by the Crown through the Lord Chancellor. The ancient privileges of the Commons are affirmed, after which the Commons return to their own House. Then the oaths are administered, and next day comes the King's speech. The real business of the House begins after the King's speech.

Organisation of House of Commons.—The chief officials of the House of Commons are the Speaker, the Chairman and Deputy Chairman of Ways and Means (of Committees), the Clerk, Sergeant-at-Arms and Chaplain. The last three are permanent officials. The Clerk, with his assistants, records the proceedings of the House, signs all orders, and generally conducts the secretarial work of the House. The Sergeant-at-Arms, with his deputies, attends the Speaker, enforces the orders of the House, and performs other such duties.

The Speaker, whose name comes from the days when the House of Commons was a petitioning body, acting through a spokesman or "speaker," is elected by the House for the duration of Parliament. He is not a party official. The man chosen is usually a member of experience who commands the respect in the House irrespective of his party ties. He

presides over the House, and, as president, interprets the rules of the House, guides debates, announces the result of decisions, decides on points of order, and advises the House, or members, on matters not covered by law or precedent. He gives advice to members of any party on procedure. He votes in the case of a tie only. By the Parliament Act of 1911 he decides whether a bill is a money bill. He is paid £5,000 per annum, with an official house. As a rule a man elected speaker continues in his post as long as he wishes, and on retiral he usually receives a peerage.

The House of Lords.—The House of Lords does not meet so frequently, nor does it sit as long as the House of Commons. Its sessions run concurrently with those of the House of Commons. The legal quorum of the House of Lords is three: actually no business is done unless at least thirty members are present. The president of the House is the Lord Chancellor, who is a member of the Cabinet and the head of the judiciary. He is usually a party man, but, unlike the Speaker, he does not guide debates. The Lords regulate their own debates. This is shown by the prefatory "My Lords" at the beginning of every speech in the House. In the House of Commons the members address the Speaker—"Mr. Speaker, Sir," being the formal beginning of all speeches. The Lord Chancellor may vote in ordinary divisions. He has no casting vote. The Lord Chancellor need not even be a peer, though in practice he usually is. The theory is that the "woolsack" is not in the House proper, so that the Lord Chancellor sits outside. In the case of the trial of a peer, a Lord High Steward appointed by the Crown presides. The House of Lords has also a Lord Chairman of Committees who presides in the Committee of the Whole, which is similar to the Committee of the Whole in the House of Commons. The permanent staff (Clerk of Parliament, Sergeant-at-Arms, Gentleman Usher of the Black Rod, who summons the House of Commons) are nominated by the Crown.

The Legislative Process.—The general principles in the legislative process are as follows: In the first place, any measure may be brought before Parliament. Second, the normal process of a bill is that it passes through each House, and is signed by the King, after which a bill becomes an Act of Parliament. Third, bills (except money bills), may be

introduced in either House by ministers or private members. Money bills must originate in the House of Commons, and bills of attainder must originate in the House of Lords. Private members' bills are presented by private members, but, unless adopted as government measures, their chances of becoming law are small. Priority in presenting private bills is decided by ballot. Fourth, the same procedure applies in both houses, except that in the House of Lords amendments may be introduced at any stage, and in the House of Commons at given stages.

Normally a public bill goes through five stages in each House—first reading, second reading, committee stage, report, and third reading. The first reading is purely formal. The minister introducing the bill asks permission to present it. Except in the case of very important bills, there is no speech or discussion. The debate on the measure starts with the second reading. The debate at this stage is on general principles. Sometimes a motion is made that the bill be read six months hence, and if this is carried the bill is withdrawn. After the second reading, money bills and bills for the confirmation of provisional orders go to the committee of the Whole. Other bills may also go to the committee of the Whole, if the House so directs, but as a rule they go to one of the Standing committees, as assigned by the Speaker, where they are discussed in detail. Then these bills are "reported" back to the House. Sometimes between the Standing committee and Report stage, an extra step is added —a Select committee stage. If the bill is reported by a Standing committee, or amended by a committee of the Whole, the House considers it in detail; if not, the report stage is omitted. Then comes the third reading, when the measure is discussed as a whole, not in detail. The readings are usually spread over several days, but in urgent measures they may take only a few hours. When the bill passes the third reading, it goes to the other House, where it passes through a similar process. If it is not amended, it proceeds direct to the King for signature. If amended, it goes back to the originating House for consideration of the amendments. Once signed by the King it becomes law.

Financial Legislation.—Financial legislation is subject to a special process. The main principles governing financial legislation are: (1) Finance bills must be presented in the

House of Commons; (2) They must be proceeded on in a committee of the Whole; (3) They must proceed from the Crown, which means the Cabinet. Private members can make general motions only in favour of some particular kind of expenditure. They can also make motions to repeal or modify taxes which the cabinet does not propose to modify. Every year there are two measures—the Appropriation Act, which deals with the grants to the public services for the year, and the Finance Act, or Budget, which (*a*) reviews the income and expenditure of the past year, (*b*) gives estimates for the coming year, and (*c*) contains proposals for raising the necessary revenue.

The financial year officially ends on the 31st of March. Before that date the Chancellor of the Exchequer submits to the House of Commons the departmental estimates for the public services. The committee of the Whole on Supply considers them and passes resolutions. These resolutions are later consolidated into a single Act. Discrepancies are rectified by supplementary grants.

The Budget is presented by the Chancellor of the Exchequer in the committee of Ways and Means, where his proposals for raising revenue are considered. The committee reports to the House, which passes a bill embodying the proposals as accepted. According to the Parliament Act of 1911 all money bills (the Speaker in cases of doubt decides which are money bills) become law with the royal consent without the consent of the House of Lords, if the Lords amend the bills.

Private Bill Procedure.—Private bills, that is, bills which affect persons or localities, e.g., bills relating to railways and harbours, are subject to special procedure. Private bills originate in petitions, and must be submitted before the session in which they are to be taken opens. The promoters of bills have to pay special fees. The bills are first examined by officials, and then introduced, in either House, and read a first time. If there is a debate at the second reading and opposition is offered to a private bill it is sent to a Private Bills committee. If the bill is not opposed the committee consists of two members and the Chairman and Deputy Chairman of Ways and Means. The Speaker's Counsel also attends. The Committee stage of a contested bill is really a judicial enquiry; after this stage, private bills proceed like public bills.

Provisional Orders.—A provisional order is an order issued by a government department authorising provisionally the commencement of an undertaking. The provision is the sanction of or confirmation by Parliament of the undertaking, which is obtained through a process similar to that of private bill legislation. Both private bills and the confirmation of provisional orders are mainly departmental measures. The parliamentary processes are usually formal ; only in the case of serious opposition is the parliamentary process evident.

House of Lords and House of Commons.—By the Parliament Act of 1911 the House of Commons is practically supreme in all legislation. It is completely master of financial legislation. According to the Act, public bills, other than money bills or a bill extending the maximum duration of Parliament, if passed by the House of Commons in three successive sessions, whether of the same Parliament or not, and rejected by the House of Lords, may, with the royal assent, become law without the concurrence of the Lords, provided that two years have elapsed between the second reading in the first session in the House of Commons, and the third reading in the third session. The Act directs that all bills under the Act must reach the House of Lords at least one month before the end of the session. The Act thus establishes the ultimate legislative supremacy of the House of Commons, though adequate precautions are taken to prevent hasty legislation by the House acting singly.

Conduct of Business.—The rules governing the conduct of business in the House of Commons are very complicated. The ordinary member knows only the general rules. For details he has to depend on the expert advice of the Speaker or of the permanent staff of the House. The rules are of three kinds—standing orders, which are permanent ; sessional orders, which apply for the session only ; and general orders, which may be temporary or may become permanent. The Speaker regulates all business. He decides who may speak. He may stop any member from speaking for unnecessary repetition or irrelevance. He may ask a member to withdraw for unruly or uncivil conduct—a process technically known as "naming" a member. A member may speak only once, save in committee where he may speak as often as he wishes to, and on points of personal explanation and points of order.

There are two methods of closing a debate—(1) The

closure, which, when carried, brings the debate to a close. It was introduced originally against obstructionist members who tried to prevent bills from passing by prolonging the debate indefinitely. To carry the closure one hundred members must support it in the House, and twenty members in Standing Committee. It takes the form of a motion in the words "That the question be now put." (2) The guillotine, or closure by compartments, according to which a time is fixed for the debate.

When the time expires the debate automatically ceases. When the debate is finished the vote is taken. The Speaker asks the *Ayes* and *Noes* to signify their wishes. The members call out *Aye* or *No* in chorus, but the result is usually challenged. Then it is repeated, after which a division is usually called for. The members proceed to the lobbies, where they are counted individually by tellers—the *Ayes* going to one lobby, the *Noes* to another. The result is announced by the Speaker.

The procedure in the House of Lords is similar to that of the House of Commons.

Privileges of members.—The members of each House have certain privileges. These privileges are guaranteed partly by ancient custom and partly by statute law. They apply to the House of Lords, the House of Commons, as Houses of Parliament, and to individual members. At the commencement of each parliament these privileges are granted to the Commons by the Crown at the request of the Speaker. The main privileges are :—(*a*) Freedom from arrest, which is enjoyed during the session and for forty days before and after it. It does not protect members from arrest for indictable offences, or from any process in civil actions save arrest. (*b*) Freedom of speech. This means that a member is not responsible outside Parliament for anything said inside. (*c*) The right of access to the Sovereign, individually for the Lords and collectively for the Commons. (*d*) That a "favourable construction" be given to the proceedings of the House. This is an old-standing privilege which is now extinct, because it is not required. Members are also exempt from jury duty, but not (as they once were) from acting as witnesses. Each House has the right to regulate its own proceedings : each also has the right to commit persons for contempt. The House of Commons used to have the right to settle disputed

elections, but this it has given to the courts. All cases of treason and felony in the case of a member of the House of Lords must be tried by the House of Lords under the presidency of a Lord High Steward appointed by the Crown. Members of the House of Lords are exempt from arrest in civil causes. They are also entitled to enjoy the various privileges, dignities and rights inherent in their dignities.

The Chiltern Hundreds.—As we have seen, the successor of a peer must be a member of the House of Lords. A member of the House of Commons cannot resign. When he wishes to be relieved of his duties, he must apply for the sinecure office known as the Chiltern Hundreds. Tenure of this office disqualifies him from acting as a member.

The Executive and Legislative : The Cabinet.—The mainspring of the whole legislative and executive system of the United Kingdom is the Cabinet. The Cabinet controls the whole course of legislation as well as the administration. Thus in one body are combined the two "powers," the legislative and the executive. Theoretically the King is head of both the legislature and the executive, but all real power lies with the Cabinet. The Cabinet is chosen from members of the party-in-power. The members are chosen from both Houses, but the party-in-power is decided by the elections to the House of Commons. The head of the Cabinet is the Prime Minister, who can continue in office only so long as he commands the confidence of the House of Commons. The normal procedure for the formation of a Cabinet is as follows : The King sends for the leader of the most powerful party in the House of Commons, and asks him to form a ministry. If the leader of the party thinks he can form a Cabinet which will command the confidence of the House of Commons he will accept office, and forthwith proceed to select the members of Cabinet from his own party. He chooses the leading men of the party, having due regard to their abilities as future ministers, to their debating powers, and to their services to the party. He submits the names chosen to the Sovereign, by whom they are formally appointed to their offices. The number of members varies from time to time. Before the first Great War the Cabinet used to consist of about nineteen members, but the Prime Minister could expand or contract it as he thought fit. The Great War made a complete alteration in the Cabinet system. For the conduct of the War, the Prime

Minister found the Cabinet far too large, and he formed a War Cabinet, a smaller body, of five members. This War Cabinet became later the Imperial War Cabinet, to which representatives of the Dominions were added. During, and immediately after the War, a large number of new departments or ministries were created—the ministries of Labour, of Pensions, of Supply (Munitions), of Food Control, of Ways and Communications, of Shipping, of National Service and Reconstruction and of Health. The expansion of the administration made it impossible to include the heads of all departments in the Cabinet.

The War Cabinet.—The War Cabinet, which started at the end of 1916, was a small body of five members, only one of whom was a department head. The others were "ministers without portfolio," i.e., they had no specific post in the administration. They were able to devote their whole attention to war affairs without being burdened with a department. Likewise the previous members of Cabinet who were departmental heads were free to manage their departments without the burden of Cabinet meetings. A separation was made between policy and actual administration. One body devised the policy : the other carried it out. The War Cabinet was a miniature legislative body, and its power was enhanced in this respect by the servility of the House of Commons. In the conduct of war the executive is supreme, hence the Cabinet, and the later War Cabinet, was able to dictate to the House of Commons. The House had the right and power to refuse to pass measures, but as a matter of fact it never exercised the right : it could not have done so without risking internal revolution. The people were not in a mood for discussion or delay. What they wanted was swift and decisive action. Another result of the War Cabinet system was that the Prime Minister ceased to be leader of the House of Commons. He delegated the function of leadership to the Chancellor of the Exchequer.

Recent Development.—After the general election of 1918, held immediately on the conclusion of the war—the war Cabinet continued. The new House of Commons at first was as subservient to the Cabinet as its predecessor, but gradually it reasserted its powers. The government was defeated on more than one occasion, but no resignation followed. The Prime Minister, however, deemed it wise to

end the War Cabinet and a new Cabinet on the old lines was created. Most of the pre-war offices were represented in this Cabinet, with the addition of some of the new offices. The total number was nineteen.

Present Position.—In the second half of 1922 the Lloyd George coalition government resigned, and was succeeded by a Conservative government formed by Mr. Bonar Law, who resigned owing to ill-health in 1923 and was succeeded as Prime Minister by Mr. Baldwin. With the break up of the Lloyd George ministry the pre-war party type of government was re-established, and has continued since. The present (National) Cabinet consists of twenty-one members—the Prime Minister, who is also First Lord of the Treasury, the Lord Privy Seal, the Lord President of the Council, the Lord Chancellor, the Chancellor of the Exchequer, eight Secretaries of State, the First Lord of the Admiralty, the President of the Board of Trade, the Minister of Health, the Minister of Agriculture and Fisheries, the Minister of Transport, the President of the Board of Education, the Minister of Labour, and (a post specially created to meet a national exigency), the Minister for Co-ordination of Defence. Other offices, e.g., the Postmaster General, First Commissioner of Works, the Attorney-General, and the Chancellor of the Duchy of Lancaster, which used to be of cabinet rank, are not at present included.

Ministers' Salaries.—Cabinet ministers used to be paid different rates of salary, but in 1937 a measure was enacted which provides for a uniform pay of £5,000 per annum for all cabinet ministers except the Prime Minister and First Lord of the Treasury who is paid £10,000 per annum, the same salary as the Lord Chancellor. This measure, known as the Ministers of the Crown Act, 1937, indicates that a certain number of ministers will always be in the Cabinet. The ministers are classified in three groups. In the first group there are seventeen posts—Chancellor of the Exchequer, eight Secretaries of State, First Lord of the Admiralty, President of the Board of Trade, Minister of Agriculture and Fisheries, President of the Board of Education, Minister of Health, Minister of Labour, Minister of Transport and Minister for the Co-ordination of Defence. In the second group are four offices—Lord President of the Council, Lord Privy Seal, Postmaster General and First Commissioner of

Works—the standard pay of each of which is £3,000 per annum. In the third group is one post—Minister of Pensions —the pay of which is £2,000 per annum. If any minister in the second and third groups is a member of the Cabinet, he draws a salary of £5,000 per annum. The classification of the ministers in the Act suggests that, in addition to the Prime Minister and Lord Chancellor, the seventeen posts in the first group will always be of Cabinet grade, and that it is unlikely that offices outside all three groups will be included in the Cabinet at all. The Act limits the number of Secretaries of State to eight. The Act also provides that of the seventeen ministers in the first group, not more than fourteen may be members of the House of Commons and not less than three members of the House of Lords. Provision is also made for the number and salaries of parliamentary secretaryships ; the number of such posts is 23 of which not more than 21 may be held by members of the House of Commons and not less than 2 by members of the House of Lords.

Leader of the Opposition.—The Act provides for the payment of a pension of £2,000 per annum to ex-Prime Ministers, and for the payment of the same sum to the Leader of the Opposition. "Leader of the Opposition" is defined as "that member of the House of Commons who is, for the time being, the Leader in that House of the party in opposition to His Majesty's Government having the greatest numerical strength in that house," and if any doubt arises as to which party in opposition has the greatest numerical strength in the House of Commons or as to who at any time is the Leader, the question is decided by the Speaker whose decision "certified in writing under his hand shall be final and conclusive."

Lord Haldane's Committee.—In 1918 a committee called the Machinery of Government committee, the president of which was Lord Haldane, presented a report in which are given the most modern views of the functions of the Cabinet. The main conclusions of the committee were that the Cabinet, "the mainspring of all the mechanism of government," (1) should be small in number, with ten or twelve members ; (2) that it should meet frequently ; (3) that it should be supplied with all the material necessary to enable it to reach rapid decisions ; (4) that it should take into consultation all ministers whose departments are likely to be affected by its decisions ; and (5) that it should have a systematic method of

seeing that its decisions are carried out by the executive departments. These things are necessary, according to the committee, to enable the Cabinet to fulfil its functions, which are, in the words of the report—"(1) the final determination of the policy to be submitted to Parliament ; (2) the supreme control of the national executive in accordance with the policy prescribed by Parliament ; and (3) the continuous co-ordination and delimitation of the activities of the several departments of state."

Cabinet Control.—The Cabinet controls the course of legislation through its power of initiating measures. Every important measure is proposed in Parliament by the member of Cabinet within whose province the subject lies. The Cabinet is jointly responsible for the measure. As a rule a Cabinet measure goes through the House of Commons safely, because the Cabinet, being composed of members of the party-in-power, controls the majority of votes. It also controls the business of the House. If, however, it does not control the majority, the Prime Minister must recommend a dissolution of Parliament to test the feeling of the nation, for without a majority he can do nothing. If his party is beaten at the elections, the Prime Minister must lay his resignation before the King, who summons the leader of the party which now can command a majority in the House, and asks him to form a ministry.

Cabinet Responsibility.—The Cabinet is thus completely responsible to the House of Commons. A majority in that House is absolutely essential to the life of the Cabinet. There are parties also in the House of Lords, but their power over the Cabinet may be judged from the fact that from 1905 to 1922 every Prime Minister and Cabinet was of the opposite political party to the majority in the House of Lords. The Prime Minister usually so arranges the ministerial appointments that a number of posts are given to peers. It must be noted that all ministers of the Crown do not serve in the Cabinet : only the heads of *some* of the ministries are included. There are many minor ministerial offices which are filled by selection by the Prime Minister from the Houses of Parliament, such as Under-Secretaryships of State and Parliamentary Secretaryships.

Parliamentary Control : Questions.—Through the Cabinet the House of Commons controls the legislature and the

executive in one body. Parliament in itself does not govern: it controls the government, which is the Cabinet. The Cabinet in its turn dominates Parliament, for it is composed of the leaders of the party which has the majority of votes in the House of Commons. Thus the Cabinet really is the centre of the whole legislative and administrative system of the United Kingdom. Apart from voting power, the members of the Commons exercise control in administrative matters by means of questions. Members may ask questions of ministers provided due notice is given and the question can be answered without detriment to the public good. No debates follow questions, as in the French interpellations, but the question system is a useful instrument for the prevention of jobbery and maladministration.

Its Legal Position.—The Cabinet is not known to the law, save in respect to payment of salaries. Legally its members function as members of the Privy Council. The Prime Minister's post was legally recognised in 1905, when special precedence was granted to the holder. Till 1937, no salary was attached to the post of Prime Minister, but he normally held a paid office, that of First Lord of the Treasury.

Its Proceedings.—The Cabinet conducts its proceedings in private. Before the first Great War no minutes of its meetings were kept. The War, however, compelled it to keep regular proceedings. Outsiders were brought in for consultation, agenda papers were issued and minutes kept. A regular secretariat was also established. Some of these departures from old custom by the War Cabinet have become regular features.

The High Court of Parliament.—We have already noted the fact that the executive and legislative are combined in one body. Parliament also exercises certain judicial functions. The chief judicial functions of the High Court of Parliament, as it is technically called, are—(*a*) the power of each House to deal with its membership and constitution; (*b*) the power of the two Houses to impeach public officers and enact bills of Attainder. This is purely theoretical. The responsibility of the Cabinet to the House of Commons has made impeachment obsolete. (*c*) The power of Parliament, by means of an address of both Houses to the Crown, to remove certain officers, such as judges; (*d*) powers of the House of

Lords only, (*i*) as the final court of appeal, and (*ii*) as the court to try peers for treason and felony.

House of Lords as a Court.—In theory the whole House of Lords can act as a court. In practice the judicial functions are exercised by the Lord Chancellor and the "Law-lords"—who are eminent lawyers specially created life-peers for this judicial purpose. These are sometimes helped by other lawyers specially called to serve, e.g., in cases coming from India, an Indian lawyer or English lawyer versed in Indian law is usually summoned. The House of Lords is the final court of appeal from all courts (save ecclesiastical) in the United Kingdom.

The Executive : The Crown.—In theory the King is the head of the whole constitutional system in the British Empire. He has the initial and final word in legislation ; he is the head of the executive ; all executive acts being done in his name; he is also the "fountain of justice," for technically all judgments are given through the courts in his name. In practice Parliament controls legislation. The King's power of initiating legislation belongs to the Cabinet, and his veto power is never exercised. Were it exercised, it would be exercised on the advice of the Prime Minister, but the Prime Minister, with the Cabinet, controls the legislation, so the veto is not necessary. His executive powers are exercised by the Cabinet, and his judicial powers by the courts, which are free from royal interference.

Legislative Powers.—The nominal and actual powers of the Sovereign in legislation really sum up the constitutional practice of Britain. Theoretically, Parliament exists at the will of the King, and transacts business at his pleasure. He summons and prorogues the Houses : he can dissolve them at any time. No bill can become an act without his signature. He can issue proclamations and ordinances, a power now used only for the Crown colonies. Actually all these acts are done on the advice of his ministers. The ordinances he issues are really orders passed under statutory law. The Cabinet controls the whole field.

Executive Powers.—Nominally, his executive powers are enormous. He has to see to the execution of all laws and to the proper working of the administrative services. He has the power of appointing, with a few exceptions, all the highest

public officers, and he can remove all officers, save judges and the Comptroller and Auditor-General. In his hands lies the expenditure of all public money according to the Appropriation Act. He has the power of pardon. He creates peers and grants honours. He orders the coining of money. He grants charters of incorporation. He is the commander-in-chief of both the army and the navy. He also raises them, according to the conditions laid down by Parliament. He represents the nation in its dealings with the foreign powers. He appoints all ambassadors. He supervises the whole field of local government. He is also head of the churches, and as such summons Convocation and appoints the chief church dignitaries.

Actual Powers.—Actually, the Cabinet is responsible for all the acts of the King. "The King can do no wrong" is an English constitutional maxim, which means that ministers are responsible for all executive work done in the King's name. "The King reigns, but does not govern." He has only nominal, not actual powers.

The Prerogative.—Even the so-called powers of the King's prerogative are dead. The prerogative, as defined by Professor Dicey, is the "residue of discretionary and arbitrary authority which at any time is legally left in the hands of the Crown." This residue is now merely nominal. Certain privileges still belong to the King. The civil list is at his disposal. He can buy and sell property like a private individual. At one time vast landed properties were attached to the Crown. Now they are managed by government, a lump sum of money having been given in exchange. The King enjoys immunity from political responsibility. He is free from restraint, i.e., he cannot be arrested nor can his goods be seized. He is also free from the chief taxes, save taxes on land bought by himself.

His real authority nowadays lies in his right to be consulted—a most important right—and the personality of the King has had most important effects in many cases. He can discuss public matters with his ministers, and offer advice, encouragement or warning.

The Stability of the Kingship.—One of the most remarkable phenomena of modern political development has been the stability of the British kingship. While the first Great War destroyed several dynasties, the English kingship seems more

firmly rooted than ever. The reasons are many. In the first place, the King is the constitutional head of a constitution which has never known a serious break ; in the second place, the monarchy is the pivot on which the machinery of government turns. All acts of government are done in the King's name, and the very constitutional practices (e.g., cabinet government), which have taken the real power from the King, really depend on the kingship, which is the pivot of the system. In the third place, the parliamentary system of government in Britain has taken from the King those powers which might have endangered his position, and, by his position in that system, he has become as "popular" an institution as Parliament itself. In the fourth place, the King can, and does, make himself really useful in national difficulties. He can suggest methods, or use his influence to persuade. In the fifth place, from his exalted position he can encourage, warn, and set an example. The work of King George in the first Great War is ample evidence of this. In the sixth place, the kingship is the greatest institutional bond of union in the Empire. Through the King more than any other agency the Empire is held together. Parliaments and other institutions differ, but the King is the King from one end of the Empire to the other. Visits of the King, or of members of the Royal House, to the dependencies beyond the sea are the seals of imperial unity. In the seventh place, the kingship, or royalty, is deeply ingrained in the English heart. Save for one short period (during the Commonwealth), there has been a regular succession of Kings and Queens in England since England was England. Finally, the Royal house is the centre and example for the whole of the social life of England. The King is supreme in dignities and precedence, and the "pomp and circumstance" of royalty appeal in England, as in India, much more than the austerity, simplicity and newness of other types of constitutional chiefs.

The Departments.—The various departments of government are conducted by ministers and a permanent civil service, which is recruited under the examination system. Some of the posts usually included in the Cabinet (e.g., Lord Privy Seal, and Lord President of the Council) are sinecures. Their utility lies in the fact that the Prime Minister is able to give them to outstanding men of his party who do not wish to have the cares of important administrative posts.

The Lord Chancellor.—The Lord Chancellor, originally called Lord High Chancellor, occupies one of the oldest offices in the British Government. His duties are partly equivalent to those of the minister of Justice in other governments. He is the chief judge of the High Court of Justice and the Court of Appeal, and he presides over the House of Lords, which, as we have seen, is also a judicial body. He is in charge of the Great Seal. Justices of the Peace and county court judges are appointed and removed by him. He has also extensive ecclesiastical patronage.

The Chancellor of the Exchequer.—The Chancellor of the Exchequer is head of the Treasury, though in theory the Exchequer is only a branch of the Treasury. Originally he was known as the Lord High Treasurer, but in 1714 the functions of the treasury were put into commission, i.e., placed under a board called the Lords of the Treasury. This board, the First Lord of which is usually the Prime Minister, is renewed with every Parliament, but does not meet. The Chancellor of the Exchequer controls the Treasury by himself.

The First Lord of the Admiralty.—The First Lord of the Admiralty, who used to be known as the Lord High Admiral, is head of all naval affairs. Associated with him is the Board of the Admiralty, which is composed of himself (First Lord), four naval lords, who are professional experts (captains or admirals), a first and a second civil lord, with a parliamentary and a permanent secretary. The Board of the Admiralty meets regularly.

The Secretaries of State.—The eight Secretaries of State are really holders of the same office, the Secretaryship of State, and in theory each secretary is competent to perform the duties of the others. Originally there was only one Secretary of State, but with the expansion of government business ultimately six more were created. Each has his special duties, as indicated by the names :—(*a*) The Secretary of State for Home Affairs. He deals with matters usually dealt with by the minister of the Interior in other governments, save in so far as some of the functions have been given to other ministries. Generally speaking, he deals with affairs not dealt with by other departments. (*b*) The Secretary of State for Foreign Affairs. He deals with foreign affairs. Protectorates used to be under his department, but now they are usually placed under the Secretary of State for the

Colonies. (*c*) and (*d*) The Secretaries of State for the Dominions and Colonies. These two offices are now separated, but they used to be held by one minister. The original office was Secretary of State for the Colonies, but, in 1925, a separate office was created for the Dominions. The Dominions office took over business relating to the Dominions and the Imperial Conferences. (*e*) The Secretary of State for War. (*f*) The Secretary of State for India and Burma. This post was abolished when India was divided into two Dominions of Indian Union and Pakistan in August 1947 and Burma was granted independence early in 1948. (*g*) The Secretary of State for Air. (*h*) The Secretary of State for Scotland. This post was raised to the status of a Secretaryship of State in 1926.

Administrative Boards.—There are several administrative boards, or commissions, the head of which is the president. He alone is the executive chief. The boards are nominal. One of these boards, the Board of Trade, was originally a committee of the Privy Council. Others, the Boards of Education and of Works, are purely administrative creations (the head of the Board of Works is called the First Commissioner of Works). Two Boards, the Local Government Board and the Board of Agriculture and Fisheries, were abolished in 1919, and replaced by ministries. The Ministry of Health, which was established by the Ministry of Health Act, 1919, absorbed the duties of the Local Government Board ; and the Ministry of Agriculture and Fisheries, established by the Ministry of Agriculture and the Fisheries Act, 1919, replaced the Board of Agriculture and Fisheries. Both these ministries cover England and Wales only ; separate authorities have been constituted for Scotland. The newer ministries—Labour and Pensions—are all administrative creations.

Legal Appointments.—There is also a number of legal appointments, the holders of which rank as ministers. Sometimes they are included in the Cabinet. The Attorney-General, the Solicitor-General, the Lord Advocate (Scotland), and the Solicitor-General for Scotland are the chief legal officials.

Principle of Re-election.—Up to 1925, if a member of the House of Commons became a minister he had to seek re-election in his constituency. The theory underlying this constitutional usage was that the member had again to secure the confidence of his constituents. The practice was more vexatious than useful ; indeed it was sometimes positively

baneful, for if the Prime Minister was not certain of public support, he had to choose not the best man for a vacant post, but a man who secured a large and safe majority at the last elections.

The Privy Council.—The Privy Council still retains a nominal importance in executive matters. Its chief importance actually lies in its judicial position. Theoretically, and legally, the Privy Council is still the advisory body of the King. All members of the Cabinet are made privy councillors. The Council never meets as a whole. One or two members can fulfil the legal forms necessary for its actions. Technically proclamations and "orders-in-council" are issued by it; actually they are issued by the Cabinet, whose members are also privy councillors. Privy councillors are appointed for life by the Crown, and can be dismissed by the Crown. The conferment of the title "Privy Councillor" gives the councillors the right to use the phrase "The Right Honourable." There are three classes of privy councillors—cabinet ministers; holders of important posts such as ambassadors; and persons eminent in law, literature, and science. The dignity of privy councillor ranks officially next to that of a peerage.

The Judicial System.—The courts of Great Britain arose originally from the Permanent Council. The system of judicial administration thus was centralised. The king originally was the final judge, but with the growth of his judicial work he had to organise courts to administer justice throughout the realm. The first attempt at organisation was the judicial circuits, when the judges of the King's Court went from place to place to hear cases. The court of the King's Bench, the Court of Common Pleas, and the Court of Exchequer all used to send out circuit judges. The Court of Chancery remained centralised in London. In 1873, the Judicature Act organised the courts, giving fixed areas of jurisdiction to each. This Act, with subsequent amending Acts, is the basis of the modern English system. Before 1873 a certain amount of decentralisation had begun by the creation, in 1840, of county courts, with a purely local jurisdiction.

Outline of Organisation.—The outline of the modern judicial organisation is as follows. At the base are the county courts, for civil cases, and the courts of the Justices of the Peace and the borough criminal courts, for criminal cases. At the top there is the Supreme Court of Judicature, which

has two branches, the High Court of Justice and the Court of Appeal. Above these, as final Courts of appeal, are the House of Lords and the Judicial Committee of the Privy Council.

County Courts.—The County Courts cover certain areas of jurisdiction (not co-terminous with the administrative county) for civil cases. A judge, appointed by the Lord Chancellor, goes on circuit to each area. The judge usually sits alone, though litigants may demand a jury of eight members. The County Courts have exclusive jurisdiction within certain limits. In some cases litigants at their own option may go to the County Courts or to the High Court of Justice. Appeals lie from the County Courts to the High Court of Justice.

Justices of the Peace. Petty Sessions and Quarter Sessions.—Justices of the Peace are appointed, and removable by the Lord Chancellor, on the recommendation of the Lord-Lieutenants of the Counties. Justices used to have administrative functions, which were abolished by the Local Government Act of 1888. They are appointed by county areas ; each county has its Commission of the Peace, which includes the judges of the Supreme Court, members of the Privy Council and the Justices of the Peace. Justices may act singly, or in petty sessions and quarter sessions. Most of their important work is done in quarter sessions, where all the Justices meet. The Justice of the Peace acts as a police magistrate : he orders arrests, examines, and tries cases. At Petty Sessions, where two justices constitute a court, minor criminal cases are tried, appeal lying to the Quarter Sessions. Quarter Sessions are held four times yearly, but similar courts may be held at other times, called "general sessions." The Quarter Sessions Court has both original and appellate functions. Appeals may be made from the Quarter Sessions to the High Court of Justice. The Quarter Sessions may also commit cases to the assizes. The assize courts are held four times a year throughout the country by Commissioners nominated by the Crown. These Commissioners are, as a rule, Judges of the King's Bench Division of the High Court, though occasionally senior King's Counsel are nominated. Trials take place before one Commissioner only. All criminal trials except those which come before a court of summary jurisdiction are conducted before a jury of twelve.

The High Court of Justice.—The High Court of Justice

has both civil and criminal jurisdiction, and it is both original and appellate. It has three divisions—Chancery, King's Bench (including the old Court of Common Pleas and Court of Exchequer), and Probate, Admiralty and Divorce. Any High Court judge may sit in any of the three divisions. The Lord Chancellor presides in the Chancery Division, the Lord Chief Justice in the King's Bench Division. A president is appointed by the Crown for the Probate, Admiralty and Divorce Division. Judges sit singly and in groups ; the High Court never sits as a body.

The Court of Appeal.—The Court of Appeal is composed of the Master of the Rolls, and the Lord Justices of Appeal. The Presidents of the three divisions of the High Court and all ex-lord chancellors are members of the Court. The court is divided into two groups of three (or two) for the hearing of appeals and hears all appeals, civil and criminal. The Court of Criminal Appeal has a special composition—the Lord Chief Justice and a number of judges of the King's Bench Division appointed by the Lord Chief Justice and Lord Chancellor.

Tenure of Judges.—Nominally all judges are appointed by the Crown for life, or good behaviour, on the recommendation of the Lord Chancellor. The Lord Chancellor himself, who is a member of the Cabinet, the Lord Chief Justice, the Lords of Appeal, who sit in the House of Lords and on the Judicial Committee of the Privy Council, and the Lord Justices of Appeal are nominated by the Prime Minister. Judges are removable by the Crown on an address of both Houses of Parliament.

House of Lords and Judicial Committee of Privy Council.—The final courts of appeal are the House of Lords and the Judicial Committee of the Privy Council. The House of Lords is the final court of appeal from all save ecclesiastical courts in the United Kingdom. The Judicial Committee of the Privy Council is practically the same body, as the four "Law Lords" are members of the Privy Council. Other members of the Privy Council who are lawyers, as well as two members nominated by the Crown, and one or two nominated to represent India and the Dominions, may attend. Only four members need be present to hear a case. Nominally the business of the Judicial Committee is to hear all cases referred to it by the Crown, but in practice it is the final

court of appeal for all cases from the ecclesiastical courts, the courts of the Channel Islands, the Isle of Man, most of the Dominions, the colonies and dependencies, including India, and from courts established by treaty in foreign countries. All decisions are given as "advice to the Crown."

3. LOCAL GOVERNMENT

Complexity of the English System.—The English system of local government is the most complex in existence. Its complexity arises from its combination of old historical units of government with modern attempts at symmetrical organisation. The first modern attempt at the systematisation of local government in England was the Reform Act of 1832. Before that local administration was carried on under a number of more or less haphazard statutes and commissions. In the counties the work was done by the county gentlemen or landowners, and the clergy; the former acted as Justices of the Peace, the latter as the vestry. Both the Petty Sessions and the Quarter Sessions, which are now purely judicial, were administrative bodies. The vestry, presided over by the church rector, and composed of him and his church wardens, was responsible for the administration of the civil or poor-law parish. In 1782 an Act was passed grouping parishes together for poor law purposes. These were administered by guardians, appointed by the Justices of the Peace. In 1834, by the Poor Law Amendment Act, parishes were grouped into Unions. A central poor law authority was set up in London, and the local boards of guardians were made elective. The municipalities, or municipal boroughs, too, were reconstituted. In 1832 they were governed by a mayor, alderman, councillors and freemen, who were only a fraction of the population. By the Municipal Corporations Act of 1835 all rate-payers were given the franchise. In 1848 a Public Health Board was established, which gave way in 1871 to the Local Government Board. By the Education Act of 1870, and the Public Health Act of 1875 more duties fell to local bodies, till in 1888 an attempt was made in the Local Government Act to organise the system. The multiplication of functions and of bodies, the overlapping of functions and of areas made the system so complex that only a few trained administrators could understand it. By the Act of 1888, and another similar Act in 1894 the system,

though not simplified, was made workable. In 1929, by the Local Government Act, the functions of the poor law authorities, or boards of guardians, were transferred to county and county borough councils.

The Administrative County.—At present England and Wales are divided into sixty-two administrative counties. These administrative counties are different from the geographical counties, which now only exist for historical purposes. The administrative county is administered by a County Council. For purposes of election the county is divided into areas similar to wards in a municipality. A county council consists of ordinary councillors, elected for three years, and aldermen elected by the councillors for six years. Half the aldermen retire every three years. The powers of councillors and aldermen are similar. Women are equally eligible with men for election and appointment. A county council elects its own chairman, and appoints its own administrative officials. Its duties are wide. They include all the administrative work done by the justices, with all the functions conferred by recent acts of Parliament. Its financial powers include the assessment and levying of the county and police rates, and their expenditure. With the consent of and under conditions laid down by the central government, a county council can also borrow money for certain purposes, such as the erection of public works on the security of the county fund. The council grants licences for guns and levies duties on dogs, carriages, armorial bearings, etc. Its other duties include the licensing of race courses and of houses for music and dancing (liquor licensing is left to the justices); the management of main roads and bridges; the administration of the poor law; the maintenance and management of pauper lunatic asylums; the maintenance of reformatories and industrial schools; the regulation of fees of inspectors, analysts and other public officers; the payment of the coroner's salary; control of contagious diseases of animals; certain functions connected with parliamentary registration and polling districts; a measure of control over the sale of foods and drugs; and the registration of places of worship. The control of the county police is vested in a standing joint committee of justices and county councillors, in equal numbers. Under Acts of 1902, 1903, and 1918 the county councils are also the local education authorities.

Urban Districts.—The administrative counties, with the

exception of the county of London, are divided into "county districts," of two kinds—urban and rural. Urban districts comprise towns and small areas more densely populated than purely rural areas. A rural district is composed of a union of parishes. These areas are both administered by councils, which have their own permanent officials. They administer their areas according to limits prescribed by statute and enforced by the central government. The district councils administer the public health and highway acts. Urban district councils are also empowered to take over from the county councils the administration of main roads. These councils exercise certain powers under the various housing acts and under provisional orders or private acts relating to gas works, electric power, and tramways. They provide burial grounds, open spaces, libraries, isolation hospitals, museums, wash-houses, allotments, etc. Urban districts with 20,000 inhabitants or over may also be local education authorities. The councils also levy the district rates. Rural district councils exercise similar functions to the urban district councils. Rural district councils, by the Act of 1894, took the place of the old boards of guardians in poor law administration.

Rural Districts.—Rural districts are further sub-divided into parishes. Parishes with a population of under three hundred have a parish meeting, which every parish elector may attend, and they may have a parish council, if authorised by the county council. Two or more parishes, if the parish meetings consent, may be grouped together under the parish council by order of the county council. Larger rural parishes have a parish council as well as a parish meeting. These parish councils exercise the powers of the old vestries. Where there is no parish council, the parish meeting exercises many of the powers of the parish council. The county council determines the size of the parish councils ; the number varies from five to fifteen. Women, married and unmarried, are eligible for both election and office. The parish council provides open spaces, and may acquire property and make allotments on rental. It controls the water supply and is the local sanitary authority. It maintains local rights of way, the local roads, cemeteries, etc., and assesses the local rates. It also appoints the overseers and assistant overseers of the poor.

Parishes.—The distinction between rural and urban was also applied to parishes. Parishes lying within the limits of

boroughs or within more thickly populated areas are still known as urban parishes. Their organisation was not affected by the law of 1894, which reorganised the rural parishes. These urban parishes preserve the old ecclesiastical organisation of vestries. They are unimportant units in local government.

Within the administrative county there are the boroughs —which, according to the Act of 1888, are of three classes :—

1. **County Boroughs.**—A number of boroughs, which either were counties in themselves or, according to the census of 1881, had a population of not less than 50,000, were made counties independent of the county councils and were freed from the county rates. Such boroughs were constituted under the Municipal Corporations Act of 1882, and, in addition, were given the powers of a county council under the Local Government Act. They originally were sixty-one in number, but have been increased from time to time. They pay certain dues, for example, a share of the expenses of the assizes (where the borough has no separate assizes of its own) to the administrative county, but are otherwise free from county taxes.

2. **Quarter Sessions Boroughs.**—The larger quarter sessions boroughs, i.e., boroughs with a minimum population according to the census of 1881 of 10,000. For certain purposes these boroughs are subject to the county council, e.g., for the maintenance of main roads, for the assizes, and in some cases, for the care of pauper lunatics. In other matters —such as those relating to the contagious disease of animals, destructive insects, explosives, fish conservancy, reformatories and industrial schools, police, sale of food and drugs, and weights and measures—the quarter sessions borough has its own powers. County councillors elected for these boroughs cannot vote on matters not assessed by the county.

3. The smaller quarter sessions boroughs, i.e., boroughs with a population according to the census of 1881 of under 10,000, which have a separate court of quarter sessions. These boroughs by the Act of 1888 were made part of the area of the country for administrative purposes, and are assessed at the county rate for most purposes, e.g., the maintenance of pauper asylums, the control of coroners, the appointment of analysts, the control of reformatories and industrial schools,

the administration of main roads, fish conservation, explosives and locomotives.

To sum up, for some purposes (general county purposes), the entire country, including all boroughs except county boroughs, is assessed at the county rate. For other purposes (special county purposes), certain boroughs are assessed independently.

Municipalities.—The borough is the standard type of municipal unit. The constitution of municipalities depends on the Municipal Corporations Act of 1882, and, partly, on the Local Government Act of 1888. If the inhabitants of an area wish to be incorporated in a municipality, they must address the Privy Council to that effect, sending at the same time a copy of the petition to the Ministry of Health and to the county council in which the proposed borough or municipality is situated. After a careful enquiry the Privy Council decides the case. If the decision is favourable, a charter of incorporation is granted in which the municipal limits and organisation are laid down. The constitution of corporations is laid down in the Municipal Corporations Act. According to this Act, the borough must be governed by a mayor, aldermen and councillors. The councillors are elected for three years, one-third retiring by rotation every year. One-third as many aldermen as there are councillors are elected by the councillors for six years, one-half retiring by rotation every three years. The mayor is elected by the council, for one year, and is paid. The councillors are elected by the rate-payers of the borough.

Such powers as are not granted to county boroughs remain with the previously constituted authorities. Thus, in the matter of justice, unless special provision is made, a borough remains part of the county for judicial administration. It may, however, on petition be organised separately, that is, it may be given its own Commission of the Peace, or its own quarter sessions. If it obtains only its own Commission of the Peace, its Justices also belong to the county commission and can hold no separate quarter sessions. If it secures the right to a separate quarter sessions, a recorder, or professional lawyer, is appointed, to whom the power of two Justices acting together is given, along with the exclusive right to hold quarter sessions.

Education.—Under the Education Act of 1918, county

councils, county borough councils and non-county borough councils are constituted authorities for higher education in England and Wales. With the approval of the Board of Education and in co-operation with other educational authorities, county and county borough councils must make provision for the development and organisation of education. They are directed to see that children and young persons (under eighteen years of age) are not debarred because of expense from the benefits of any education provided by the councils. Continuation schools are to be established for persons under sixteen years of age, and ultimately for those under eighteen years of age. They must provide for the supply and training of teachers. The county and borough councils are also responsible for the medical inspection of scholars in secondary, continuation, and certain other non-elementary schools or institutions. Local education authorities also must see to the provision of playgrounds and provide physical training. The authorities are empowered to raise money by taxes and loans. The Board of Education contributes not less than half the net expenditure recognised by the Board. The councils have power to provide scholarships or maintenance grants and to pay fees. They must not pay for religious instruction in their own schools, but in schools not provided by them they can neither impose nor prevent religious instruction.

The London County Council.—The Local Government Act of 1888 made special provision for London. Before 1888 the area covered by London was governed by a large number of bodies. London now comprises the City of London proper, a compact area of about a square mile, and twenty-eight metropolitan boroughs, which cover about 118 square miles beyond the city. The whole area by the Act of 1888 was made an administrative county, with its own council (usually known as the L.C.C., London County Council). The metropolitan boroughs have each their own organisation of mayor, aldermen, and councillors. They have statutory powers in relation to housing, public health, streets and roads, education, rating, etc., but are not constituted with the same powers as other boroughs. The London County Council has certain powers of control over them in respect to the sanction of loans, the construction of sewers, and other matters where central control is desirable to secure uniformity throughout the area. The Corporation of the City of London preserves

many of its mediaeval forms and organisations, as well as certain constitutional privileges. It maintains its own police, and has the monopoly of all markets within seven miles of the city boundary. It administers corporation property and maintains several bridges across the Thames.

Other boards or authorities set up specially for the London area are the Metropolitan Water Board, created in 1902, the Metropolitan Asylums Board, created in 1867, and the Port of London Authority, which controls the lower reaches of the Thames. The Metropolitan Police are controlled directly by the Home Office.

Central Control.—The relations existing between central and local control in England, like many features of the English system show contradictions between practice and theory. Theoretically, the centralisation of authority in legislation is great. The central government, however, leaves the actual administration to local authorities. The chief officers concerned with local government—the Home Office, the Boards of Education and of Trade, and the Ministry of Health—have wide powers of control, sanction, appointment and examination, but these powers are seldom used. In normal times the Ministry of Health infrequently interferes in the local choice of officials. The Ministry is more ready to advise than to interfere. The gradual release from all but theoretical control is of course due to the seriousness and efficiency by which local authorities do their work. The interference of the central government varies according to the efficiency or inefficiency of the local authorities.

Scotland.—The above description applies to the system of local government in England and Wales only. Scotland has its own system, the main features of which are similar to that of England and Wales. In each municipality there is a town council, with a lord provost, or provost (the equivalent of the English Mayor), and baillies, selected from the councillors, who act as magistrates and sit as such in police courts. County councils are responsible for rural administration. Parish councils used to exist, but they were abolished in 1929. The superior authority of Scottish local government is the Scottish Office.

4. THE GOVERNMENT OF IRELAND

Historical.—Ireland is divided into two parts—Northern

Ireland (or Ulster) and the rest of the island which till the end of 1937 was known as the Irish Free State. In its new constitution, the Irish Free State has adopted the official name of Eire, which is the Irish equivalent of the English word Ireland. The different political outlook of the two parts of Ireland is due to historical causes with roots in the distant past, but the most fundamental cleavage is that of religious sect. Northern Ireland is predominantly Protestant in religion, Southern Ireland is Roman Catholic. In political sentiment Ulster has always been at one with Great Britain whereas Catholic Ireland for many years has shown pronounced separatist tendencies. The Union of Great Britain and Ireland in 1801 merely accentuated the aspirations of the southern Irish people for severance of political relations with Great Britain, and during the whole period when southern Irish members were returned to the House of Commons, their policy was directed towards helping the British party which was most likely to give Ireland Home Rule. The first important Irish Home Rule party leader was Isaac Butt; he was succeeded by the better known Parnell who made the Irish Home Rule question one of the leading problems of the second half of the nineteenth century. Parnell made the Irish Nationalist party a power in British politics. The party was sufficiently numerous to hold the balance between the two British parties, the Conservatives and Liberals. Pressure from the Irish Nationalists forced the Liberal Party, under Mr. Gladstone, to take up their cause and his attempt to pass an Irish Home Rule Bill in 1886 broke up the party. The dissentients were known as Liberal-Unionists, and they gradually merged with the Conservatives. Nearly thirty years later, just at the outbreak of the first Great War, Mr. Asquith's government passed an Irish Home Rule measure, with a suspensory clause for the duration of the War. During the War, agitation for Irish Home Rule reached a climax; not only did a rebellion break out in 1916 in Dublin but a number of Irish extremists took an active part in aiding the enemy powers. The old Irish Home Rule party disappeared and its place was taken by a new party officially known as Sinn Fein ("Ourselves alone"); the name was taken from a movement which had been in existence for many years. At a general election in 1918, the nominees of this party carried practically all the southern Irish consti-

tuencies. In 1920, an Act was passed which set up two separate parliaments, one for Southern Ireland and the other for Northern Ireland. This settlement was accepted by Ulster and the first Ulster Parliament was elected in May 1921 and opened by the King in June of the same year.

Southern Ireland repudiated this settlement and the country drifted more and more into lawlessness, until in 1921 a so-called "peace treaty" was signed between the Southern Irish leaders and the British Government. This treaty formed the basis of the Irish Free State (Agreement) Act 1922. This Act constituted the Irish Free State, or as it was known in Irish, the Saorstat Eireann.

The fundamental principle of the Treaty of 1921 was the concession to Ireland of the same constitutional position in the British Empire as Canada, Australia, New Zealand and the Union of South Africa. The principle was established that the relation of the Free State to the Imperial Parliament and government, unless otherwise expressly provided, should be the same as that of the Dominion of Canada. Northern Ireland, on the other hand, continued to be an integral part of the United Kingdom.

Northern Ireland.—Northern Ireland, which includes the parliamentary counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone, and the parliamentary boroughs of Belfast and Londonderry has a bicameral legislature consisting of a Senate and a House of Commons. The Senate is composed of 2 ex-officio members and 24 members elected by the members of the Northern Irish House of Commons; the House of Commons is composed of 52 elected members. The term of the House of Commons (five years maximum) and the qualifications for membership are similar to those prevailing in Great Britain. The legislature has power to make laws on all subjects affecting its area, save a number of reserved subjects, e.g., subjects relating to the Crown or the succession thereto, the making of war or peace, the navy, the army, air force or territorial armies, treaties, dignities, titles of honour, wireless telegraphy, coinage, trade marks, copyright, and trade out of Northern Ireland. The executive is vested in the King-Emperor, who is represented by a Governor appointed for six years. There is a responsible ministry composed at present of seven ministers—the Prime Minister, and Ministers of Finance, Home Affairs, Labour,

Education, Commerce and Agriculture. The judicature consists of a High Court of Justice and a Court of Appeal. Northern Ireland continues to be represented in the Imperial House of Commons by 13 members. The channel of communication between Northern Ireland and the British Government is the Home Office.

The Irish Free State.—The Irish Free State constitution lasted till 1937. During this period, the relations between the United Kingdom and the Free State, though not smooth, were gradually established. With full Dominion status, on the Canadian model, the Free State government found itself virtually independent. Certain grievances arising from the "peace treaty" kept national friction alive. Economic difficulties arising from refusal to honour some financial obligations had to be met by the imposition of import duties on Irish produce by the United Kingdom. In internal matters the Irish government was entirely free from interference by the British government, but the Irish leaders, nursing ancient grievances and somewhat embarrassed by independence, kept national feeling alive by adopting such measures as making study of the Irish language (Erse) compulsory, adopting an Irish national flag, and passing a law of Irish citizenship. With the passing in 1931 of the Statute of Westminster, which is discussed in the following chapter, the Irish Free State received full powers of national self-determination. Taking advantage of this Act, the Irish government drafted a new constitution establishing a republican form of government. This constitution, submitted to and approved by a plebiscite, was brought into effect at the end of 1937.

Constitution of Eire.—The name of the state is Eire, which is the Irish for Ireland. Eire is declared to be a sovereign independent democratic state. Its national flag is a tricolour of green, white and orange. The Irish language or Erse, is declared to be the national language and as such is the first official language. The English language is recognised as a second official language.

The constitution also declares the right of the Irish nation to choose its own form of government and to determine its relations with other nations. It also postulates the right of the Irish people to develop their own political, economic and cultural life according to their own genius and traditions.

The state of the national territory is declared to be the whole of Ireland with the adjacent islands and territorial states. Pending the reintegration of the national territory (i.e. pending the absorption of Ulster by Eire) and without prejudice to the right of the Irish government to exercise jurisdiction over the whole of Ireland, it is stated that the laws made by the Irish Parliament shall cover the area of the Irish Free State.

President of Eire.—The Irish constitution provides for a President to be elected by the direct vote of the people for a term of seven years. The President is eligible for a second term of office. The President summons and may dissolve the legislature on the advice of the Prime Minister. He also signs and promulgates all laws. The supreme command of the Irish defence forces is vested in him and he is also given the power of pardon.

Legislature.—The legislature of Parliament consists of the President and two Chambers—a House of Representatives and a Senate. In the Irish language the parliament is known as the Oireachtas, the House of Representatives, as Dail Eireann and the Senate as the Seanad Eireann. All citizens, male and female, of the age of 21 years and over are entitled to vote and are eligible for membership. The Senate consists of sixty members eleven of whom are nominated by the Prime Minister and forty-nine elected ; three are elected by the national university of Ireland, three by the University of Dublin and forty-three from panels of candidates representative of various interests and professions.

The Executive.—The executive consists of a body of not less than seven and not more than fifteen members appointed by the President. The government is responsible to the House of Representatives. The government has collective authority and is responsible collectively for the executive departments. The Prime Minister (in Irish Taoiseach) is appointed by the President on the nomination of the House of Representatives. The other members of the government are appointed by the President on the nomination of the Prime Minister with the previous approval of the House of Representatives. The Prime Minister is empowered to appoint a member of the government to act for all purposes in his place in the event of his death, permanent incapacitation or temporary absence. This official in Irish is known as the

Taniste. The Prime Minister, the Taniste and the Finance Minister must be members of the House of Representatives; the other members of the cabinet may be members of either house, subject to the provision that not more than two may be members of the Senate.

Council of State.—The constitution also provides for a Council of State, a consultative body the function of which is to advise the President on certain matters in connection with which he can exercise his power only after such consultation. The constitution confers certain specific powers on this body. The Council of State consists of seven ex-officio members and other members, and the President himself is empowered to appoint not more than seven members.

Judiciary.—The judiciary consists of courts of first instance and a court of final appeal called the Supreme Court. Courts of first instance include a High Court which is invested with original jurisdiction and partly determines all matters on questions of law (civil or criminal), of fact and also courts of local and limited jurisdiction with a right of appeal determined by law. The High Court alone has original jurisdiction with regard to the constitution. The Supreme Court has appellate jurisdiction from the judgments of the High Court subject to certain exceptions.

Character of the Irish Constitution.—The constitution of Ireland or Eire is the first constitution framed and enunciated by a Diminion after the passing of the Statute of Westminster 1931. The Irish constitution effects practically a complete separation between what used to be the Irish Free State and the United Kingdom. The constitution is intensely nationalistic in form. It contains not only an outline of government but a statement of national aspirations, the chief of which is the reunion of Northern and Southern Ireland. The English language and the Union flag are abolished. The former is replaced by the Irish language (Erse) which only a small proportion of the Irish people can speak or read. The Union flag has not been used in the Irish Free State for many years. The government of the Irish Free State contains no representative of the Crown and all executive work is exercised in the name of the Irish government, not of the Crown, as in the other Dominions, and dependencies. Nevertheless the government of the United Kingdom still regards Ireland (or

Eire) as a member of the British Commonwealth of Nations. This arises from the terms of the treaty of 1921.

The present position of Eire thus is that though technically it is a Dominion, actually it is independent. Were it declared constitutionally independent, the effect would be disastrous to Eire, for then ordinary national law would take its course. Natives of Eire resident in the United Kingdom, unless naturalised, would become aliens. Throughout British history, large numbers of southern Irishmen have emigrated to Great Britain, for service in the armed forces of the Crown and for employment in agriculture and industry. If they had to return to Eire, the Irish government would be acutely embarrassed, for no employment could be found for them in their own country, the population of which is a little larger than that of a large city, and which is mainly agricultural in character. There is a growing body of opinion in Britain, especially in industrial centres, which favours the view that Eire should be made independent, in order that the large numbers of unskilled Irish workers in Great Britain should be deported. This course, it is considered, would go far to relieve the problems of unemployment and public relief in some of the big industrial areas. On the other hand, if Ireland were independent, difficult problems of Imperial unity, especially in connection with defence, would arise.

CHAPTER XXII

THE GOVERNMENT OF THE BRITISH DOMINIONS

1. THE USE OF THE WORD "DOMINION"

General.—In chapter xviii a short account was given of the development of British colonial policy, and a general classification was given of the British dependencies or dominions. The present chapter is devoted to the governments of some of the Self-governing Dominions—the Dominion of Canada, the Commonwealth of Australia and the Union of South Africa; but a few preliminary notes are necessary, by way of recapitulation.

Dominion.—The use of the word Dominion (with a capital D) in a special or restricted sense dates from the adoption

of the word in the British North America Act, 1867, which is the central instrument in the constitution of Canada, to designate the new political unit which arose from the union of the different provinces of British North America. Although the word Dominion was not adopted when the Australian federation came into being—the designation chosen by Australia was "Commonwealth"—New Zealand, the constitution of which dates from 1852, was accorded the name of Dominion, by Order in Council, in 1907. At the Colonial Conference of 1907 the term "Dominion" was adopted to denote those parts of the British Empire, other than the United Kingdom, which had attained the full measure of responsible government, i.e., had ceased in fact, if not in law, to be dependencies. The "Dominions," in this new sense were Canada, Australia, New Zealand, the Union of South Africa and Newfoundland. As already indicated, in accordance with the general trend of British policy, as time went on other areas were given responsible government when they were deemed ready for it. Malta was given responsible government in 1921 and Southern Rhodesia in 1923. And, as already noted, the Irish Free State was created in 1921, after a long period of struggle and negotiation. The spread of self-government in the Empire beyond the old "Colonies" made the meaning of Dominion rather indeterminate. The term was finally defined by law in 1931, in the Statute of Westminster.

Development of Autonomy.—For many years prior to the Great War the position of the Self-governing Dominions with reference to the United Kingdom was that, while the sovereign authority of the United Kingdom was unquestioned, in actual practice, the Self-governing Dominions were autonomous. No specific legal document to this effect had been brought into being. The Self-governing Dominions were content to carry on in the British Commonwealth of Nations knowing that they were in all essential respects "free" countries. In internal matters, the Imperial government had for long followed a policy of non-intervention, though it still represented them in foreign affairs. There was however constant co-operation, and on different occasions, the Self-governing Dominions had been invited to send representatives to conferences of an international character, such as the Conference on the Safety of Life at Sea in 1913-1914. The first Great War greatly accelerated the growing tendency towards co-operation

between the United Kingdom and the Self-governing Dominions, and also India. The necessity of co-ordinating imperial effort and resources for the prosecution of the War led to the creation of the Imperial War Cabinet, in which representatives of the Self-governing Dominions and India sat alongside British statesmen to discuss combined policy and action. When the war ended, the Empire representatives were given a place in the peace negotiations, and ultimately the peace treaties were signed generally for the British Empire by the British representatives, and specially for each Self-governing Dominion by the representatives of the Self-governing Dominions. The Dominion legislatures also approved of the treaties just as if they were independent law-making bodies.

The Balfour Declaration.—After the War, the new relationship of the British with the Dominion governments came under frequent discussion at Imperial Conferences. The Imperial Conference of 1926 appointed a special committee to investigate all questions on the Conference agenda affecting inter-Imperial relations, and the report of this committee contains an historic attempt at defining the status of the Self-governing Dominions. This definition of Dominion status—known sometimes as the Balfour Declaration—is "They (the Self-governing Dominions) are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any respect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations."

This "Declaration" is more a description than a definition, and the Committee found it necessary to qualify it in several respects because, as they said, "the existing administrative, legislative and judicial forms are admittedly not wholly in accord with the position as described." They made certain specific recommendations regarding the Royal style and titles and the status of Governor-General, but they found it necessary to leave the working out of details to a representative Committee; they also recommended that a sub-conference should be appointed to examine the position of the United Kingdom and the Self-governing Dominions in respect to the British Merchant Shipping Acts. These two bodies were subsequently amalgamated into a Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation,

the report of which, published in January 1930, contains a full analysis of the relationship between the British and Self-governing Dominion laws and constitutional practices. The Report was practically entirely adopted by the Imperial Conference of the same year. The proposals were incorporated in the Statute of Westminster which became law on December 11, 1931.

Statutory Definition.—In the Statute of Westminster the expression " Dominion " is defined thus : " Any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland." This therefore is the statutory definition of the word " Dominion," and henceforth the word will be used in this sense. As has already been pointed out, the constitution of Newfoundland is temporarily suspended, and the Irish Free State, now called Eire, has made a constitution of its own.

2. THE STATUTE OF WESTMINSTER

The Preamble.—The Statute of Westminster is one of the most important landmarks in the history of the British Empire. It is a short measure, containing a Preamble and only twelve clauses. The Preamble is interesting, as it sums up the recognised constitutional relationship between the United Kingdom and the Dominions. Part of it reads as follows :—

"And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration of the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliament of all the Dominions as of the Parliament of the United Kingdom.

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request or with the consent of that Dominion."

The Provisions of the Statute.—The individual provisions of the Statute cannot be analysed here, but inasmuch as the constitutional development of the Dominions is summed up in them, reference must be made to the more salient features.

Section 1 contains the definition of Dominion, given above.

Section 2 (1) declares that the Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of the Statute by the Parliament of a Dominion. The Colonial Laws Validity Act, which for many years was regarded as the Magna Charta of Dominion autonomy, abolished the old legal doctrine of "repugnancy" as applied to Acts of a colonial legislature. It made an Act of a colonial legislature invalid only if that Act were inconsistent with the provisions of an Imperial Act, or order or regulation made under it, which was applicable to the Colony. This meant that the colonial legislatures could make such laws as they chose, provided no Imperial Act applied in the same case. It was also enacted that no colonial law should be invalid simply because a Governor had assented to it against the instructions of the Crown, unless these instructions formed part of the colonial constitution in question. Moreover, the Act gave power to the colonial legislatures to establish, abolish or reconstruct Courts of Justice and to alter colonial constitutions provided such alteration did not run counter to the conditions laid down in the constitutions themselves. The Act thus gave certain constitution making powers to the colonial legislatures without at the same time taking away the supreme constitution making power of the Imperial legislature.

Section 2 (2) of the Statute reads: "No law and no provision of law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion." This clause practically confers supreme law-making power on Dominion legislatures. The power, however, is somewhat limited by later sections.

Section 3 enables Dominion Parliaments to make laws having extra territorial operation. This section was included

in the Statute to make it clear that Dominion legislatures had powers to pass laws having effect outside their own immediate boundaries. Previously, there was doubt regarding the competence of Dominion legislatures to enact laws with regard to such subjects as fisheries, air navigation, deportation, smuggling and immigration. The Statute not only debars the Imperial legislature from making such laws for the Dominions, but states positively that the Dominions may do so themselves. Such extra-territorial powers are exercised by most independent states. Some have feared that the powers conferred by the Statute are too wide, as one Dominion may pass laws affecting another Dominion. Actually the intention of the Statute is to confer power on Dominion legislatures to pass laws operative outside the three-mile limit of their own territory, in respect to their own subjects only.

Sections 5 and 6 of the Statute are explanatory. They deal with the British Merchant Shipping Act and Colonial Admiralty Courts. The United Kingdom used to pass merchant shipping legislation applicable to all the Empire. The Merchant Shipping Act, 1894, regulated the spheres of British and Dominion powers in this respect. The general principles of maritime law were regarded as a matter of Imperial concern, but in 1911, under the Maritime Conventions Act, the maritime legislation of the United Kingdom was not made automatically applicable to the Dominions. But though the Dominions could make local regulations, or refuse to assent to new maritime enactments passed by the Imperial Parliament, they still had no general power to make maritime laws as they wished. This power the Statute of Westminster now gives them. As regards colonial courts of Admiralty, the Statute confers complete powers on the Dominions to regulate such courts. In effect, such powers were conferred by the Colonial Courts of Admiralty Act, 1890, but certain powers of reservation still remained, and there was some doubt as to the powers of Dominion governments in certain cases. These doubts have been dispelled by the Statute of Westminster.

Sections 7, 8 and 9 of the Statute are of great constitutional importance, and require careful examination. Section 10 provides that, in the case of Australia, New Zealand and Newfoundland, sections 2 to 6 shall apply only if the provisions of these sections, or of any one of them, are adopted

by the Parliament of the Dominion. Sections 11 and 12 are explanatory and formal.

Sections 7, 8 and 9 require quotation in full. They read :

7. (1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder.

(2) The provisions of section 2 of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.

(3) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively.

8. Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution or the Constitution Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

9. (1) Nothing in this Act shall be deemed to authorise the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia.

(2) Nothing in this Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia in any law made by the Parliament of the United Kingdom with respect to any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence.

The Dominion Constitutions.—To explain these sections, a note is necessary on the Dominion constitutions. The constitutions of the Dominions are Acts of the Imperial Parliament, except in the case of Newfoundland, for which a constitution was granted by Letters Patent. The Dominion

governments thus derive their authority from Acts of the Imperial legislature. These Acts provide a legislature with power to make laws for the peace, order and good government of the countries. The executive government of the Dominions is vested in the Crown, which acts through its representative, the Governor-General, who is empowered to carry on the administration. The representative of the Crown is given power to appoint an Executive Council to carry on the administration, but (except in the case of the Irish Free State) the Dominion constitutions make no reference to the relations between the Executive Council and the legislature. In the case of the Irish Free State provision was made to govern the relation between the executive government and the legislature, and this provision was made mainly on the basis of the usage which had grown up in the other Dominions. Thus, except in the Irish Free State, the constitutional statutes leave the operation of the organs of the responsible government mainly to custom and usage, as in the case of the British constitution itself. Moreover, while in the federations elaborate care was taken to demarcate the powers of the central and provincial Governments, in no case was any attempt made to demarcate the sphere of influence of the Imperial as distinct from the Dominion governments. The constitutions left the powers of the Imperial government to be exercised by supervision which could be exercised by means of disallowance of legislation, or reservation of legislation for the assent of the Crown.

Reservation.—There is a general provision for reservation at the discretion of the Governor-General in the constitution Acts of the several Dominions, viz., Canada, Australia, New Zealand, South Africa and the Irish Free State. There is also a provision for the reservation of legislation on particular subjects. This applies in the case of Australia, New Zealand and South Africa. There is also a special type of reservation in the case of Australia and South Africa, namely, that bills which limit matters in which special leave to appeal may be granted from the highest Dominion tribunal to the Judicial Committee of the Privy Council must be reserved. There are particular types of reservation in some of the constitutions, e.g., in the case of South Africa any Bill repealing or amending part of the constitution dealing with the House of Assembly and any Bill purporting to abolish provincial

Councils or abridge their powers must be reserved. Also, there are special provisions regarding the reservation of legislation relating to shipping, arising from the British Merchant Shipping Act, 1894, and the Colonial Courts of Admiralty Act, 1890.

Disallowance.—Provision for the disallowance of legislation exists in all the constitutions of the Dominions, except in the case of the Irish Free State. The period during which disallowance may be exercised varies from constitution to constitution ; but in no case does it exceed two years. In actual practice, no disallowance has ever occurred in the case of Australian or South African legislation, and the last case of disallowance in Canada was 1873 and in New Zealand 1867. Certain powers of disallowance also exist regarding the conditions under which Dominion stocks may be admitted as Trustee securities in the United Kingdom. Particular kinds of disallowance arise from the Colonial Laws Validity Act, 1865, the British Merchant Shipping Act, and from doubts regarding the powers of Dominion legislatures with regard to extra-territorial legislation. It should be noted, however, that, before the Statute of Westminster was passed, the courts of the Dominions, by various interpretations, had considerably restricted the scope of such disallowance.

Another type of restriction imposed on Dominion autonomy is the right to appeal to the Judicial Committee of the Privy Council. An appeal may exist as a matter of right or by special leave from the Judicial Committee ; the right of appeal holds both for criminal and civil cases, with certain qualifications. The appeal of right can be abolished or modified by an Act of the Dominion legislatures ; but an appeal by special leave, in virtue of being exercised by the Royal Prerogative, can be regulated by Imperial statute only.

Effect of the Statute of Westminster.—The Statute of Westminster confers very wide powers on the Dominions with respect to the making or amending of their constitutions. Till 1931, the constitution making or amending power of the Dominions was regulated by section 5 of the Colonial Laws Validity Act which reads : "Every representative legislature shall in respect to the colony under its jurisdiction have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers and procedure of such legislature, provided that such laws shall have been passed in

such manner and form as may from time to time be required by an Act of Parliament, Letters Patent, Order in Council or Colonial Law for the time being in force in the said colony." In other words, the constitution making powers of the Dominions were limited by the Imperial constitutional Acts, although, as previously pointed out, especially in Australia, judicial interpretation has somewhat extended the constitutional scope of the Dominion legislatures. The Statute of Westminster has, with respect to certain Dominions, preserved the old position ; in respect to others, it has made a radical change.

Canada.—Section 2 of the Statute by itself would have given power to any Dominion legislature to rescind or amend its constitution at will. In the case of Canada, for example, that section would have given the Canadian legislature power to deal with the British North America Acts—the constitution of Canada—as it thought fit. But Canada is a federation, and the constitution, drawn up after prolonged negotiation with the Canadian provinces, was of the nature of a pact. Amendments to the constitution could be made only by the Imperial Parliament, which, in practice, undertook legislation at the request of the Canadian legislature. There was no special procedure governing the initiation of constitutional amendments, but it was always understood that, as the constitution was of the nature of a pact, no amendment affecting the provinces would be made without their consent.

When the question of defining the status of the Dominions in a statute came to be considered, it was made clear by the Canadian representatives that, whatever the statute contained, the Imperial government should remain the ultimate constitution-making authority. Accordingly, in the Statute of Westminster, a special clause was inserted—Section 7 (1) —to the effect that the Imperial Government should still be the constitution-making authority, as it has been throughout the history of the Dominion. The Statute of Westminster, it has to be added, contains nothing regarding the method by which amendment of the constitution may be effected. Possibly, as in the past, this will be left to usage.

The Canadian Provinces.—Although the Statute of Westminster exempted the Canadian constitution from the operation of its own main sections, it extended its main powers to the provincial legislatures of Canada, *vide* section 7 (2).

Section 7 (2) confers on the provincial legislatures of Canada, as well as on the Dominion legislature, complete freedom of legislation, within the sphere demarcated for them in the British North America Acts.

Result of the Statute.—The effect of the Statute of Westminster on Canada is that so far as the constitution of Canada is concerned, the Imperial Parliament is the paramount authority. The powers of reservation and disallowance so far as provided in the British North America Act, remain. They cannot be abolished except by an Act of the British legislature. But in respect to all other matters, the parliaments of Canada and of the provinces of Canada have full powers. All restrictions arising from the Colonial Laws Validity Act and from British Merchant Shipping Legislation have disappeared. There is no territorial limitation on legislation for either the Dominion or provincial parliaments apart from what is laid down in the British North America Act. And, so far as appeals to the judicial committee of the Privy Council are concerned, the Dominion and provincial legislatures are free to take such action as they please.

Australia.—The Commonwealth of Australia also is a federation, formed after long negotiations among the units. The constitution is an Imperial Act—the Commonwealth of Australia Constitution Act, 1900—and, as in the case of the Canadian constitution, this Act is of the nature of a pact. In Australia, however, the states or provinces have residual powers, whereas in Canada they belong to the federal government. Hence, in Australia, the states are very jealous of their constitutional rights. The form in which the Australian constitution is safeguarded in the Statute of Westminster reflects the desire of the states to have their constitutional position made secure from the chance of disturbance from local influences. The Australian constitution Act can be amended both by the Imperial Parliament and the Australian legislature. The Australian legislature was given special powers in the Act to amend the constitution, but elaborate provision, including the use of a referendum, was made to ensure that no amendment could be made without the concurrence of the majority of the states. It was also provided that no proposed alteration diminishing the proportionate representation of any state in either house of the Parliament, or the minimum number of representatives of a state in the

House of Representatives, or increasing, diminishing or otherwise altering the limits of the states should become law unless the majority of the electors voting in that state approved the proposed law.

When the proposals which led to the Statute of Westminster were under consideration, similar provisions were proposed for both Canada and Australia to safeguard their constitutions, but, after these had been discussed in the Commonwealth Parliament, it was found necessary to include sections 8 and 9 (1). Section 8 safeguards the Australian constitution from alteration except in the manner existing before the Statute came into force; and section 9 (1) limits the Commonwealth legislature to matters within its own constitutional sphere. Section 9 (2) of the Statute explains itself and section 9 (3) was included in order to meet certain difficulties connected with the interpretation of section 4, which had been raised by Australian politicians. The same difficulty was not felt in the other Dominions. Australia, in common with New Zealand and Newfoundland, also deemed it necessary to preserve explicit power to adopt sections 2 to 6 of the Statute, or revoke them, as she thought fit. The Commonwealth Parliament, it should be added, while obtaining these powers, gave an undertaking to the states to take no action towards adopting sections 2 to 6 without prior consultation with them. So far as Australia is concerned, the impact of the Statute of Westminster on her constitutional position is that all restrictions on Commonwealth legislation can be withdrawn by the adoption by Australia of sections 2 and 3 of the Statute. The constitutional position is safeguarded, as in Canada, by it being provided that the safeguards—reservation and disallowance—can be removed only by the complicated procedure of constitutional amendment provided at the end of the Commonwealth Act. Restrictions laid down in Imperial Acts can be removed if Australia adopts section 2 of the Statute. So far as appeal to the Judicial Committee of the Privy Council is concerned, the Australian Parliament, by adopting section 2, could be practically supreme, for it could limit the scope of appeals, or limit the appeals, or repeal the Imperial Acts affecting the appeals.

New Zealand.—The constitution of New Zealand is an Act of the Imperial legislature—the Constitution Act, 1852. New Zealand is a unitary government, and accordingly there

are no complications regarding the rights of states or provinces. New Zealand, like Australia, safeguarded her constitution by insisting on the procedure previously in existence being followed in the case of repeal or alteration. New Zealand also reserved the right to adopt sections 2 to 6 of the Statute when she thinks fit. The constitutional effect of the Statute for New Zealand is practically the same as that noted in the previous paragraph for Australia.

Newfoundland.—The position of Newfoundland, the constitution of which was granted by Letters Patent, is practically exactly the same as that of New Zealand. Newfoundland has a unitary government, but no special safeguard to her constitution was included. Newfoundland, like Australia and New Zealand, reserved the right to adopt the effective parts of the Statute when she thinks fit.

South Africa and the Irish Free State.—No reservations are made in the case of the Union of South Africa or the Irish Free State. The constitution of South Africa is the South Africa Act, 1909, and that of the Irish Free State, the Irish Free State Constitution Act, 1922—both Acts of the Imperial legislature. Both constitutions are unitary, though that of South Africa contains federal elements. Both countries have accepted the full powers of the Statute. So far as the constitution of South Africa is concerned, the adoption of clause 2 gives power to remove reservation and disallowance, so far as every imperial law is concerned, including the South Africa Act itself. The position regarding the removal of appeal to the Privy Council is the same as in the Commonwealth and New Zealand. The position of the Irish Free State is practically the same as in South Africa, except that the relationship of the United Kingdom and the Irish Free State is governed by a treaty which is as binding after the Statute was passed as it was before.

Summary.—The outstanding fact of the Statute of Westminster is that it is a Statute of the British legislature. As such, the Statute is an emblem of the sovereignty of the King-in-Parliament. The British legislature could if it so wished repeal the Statute. What the Statute purported to do was to make clear the constitutional usage which had gradually grown up governing the relations of the British and Dominion governments. Long before the Statute was passed, the Imperial Government had ceased to exercise con-

trol over the governments of the Dominions ; the relationship was one of co-partnership, not of master and servant. Imperial policy was not dictated from Westminster, or imposed on the Dominions. A Governor-General could carry out imperial policy only if his ministers approved. The Statute merely places on statutory record what in actual fact was the constitutional usage, and, as such, must be regarded not as the entire constitution of the Dominions but only as part of the total constitutional structure.

3. THE CONSTITUTIONS OF CANADA, AUSTRALIA AND SOUTH AFRICA—HISTORICAL

General.—It is now proposed to discuss the constitutions of Canada, Australia and South Africa in more detail, but for a complete examination the student must acquaint himself with the actual constitutions themselves. These three constitutions have been selected for discussion because they all have interesting features. The constitution of Canada and Australia are both federal, but they represent two types of federations ; while the constitution of South Africa is unitary, possessing several federal characteristics. The constitutions of the other Dominions are unitary, and possess no features of very special importance. The constitutions will be examined together, for the purpose of comparison, but first a short historical note is necessary on each, as in each case the historical antecedents affected the type of constitution adopted.

Canada : Historical—Early Constitutional Efforts.—The starting point of Canada's constitutional history is the Durham Report of 1839. Prior to the Durham Report, there had been a great deal of trouble in Canada. The first British Act passed for the governance of Canada was an Act of 1774. This Act, passed the year after the Treaty of Quebec, under which Quebec became a British possession, applied to Quebec only. It established a Council, which was empowered to make ordinances, but the ordinances were subject to the consent of the British government. In 1776 a Privy Council was established ; its functions were purely advisory. The Canadian territories gradually expanded, until, after the American War of Independence, there were several provinces—Quebec, to which Labrador and the islands annexed to Newfoundland were added, Nova Scotia, New Brunswick

and the territories known as Upper Canada. In 1791 a constitutional Act was passed. The purpose of this Act was to give a constitution to Canada similar to that of Great Britain. It divided Canada into two parts, Upper and Lower Canada, and for each province it created a Legislative Council and Assembly, the members of which were to be nominated. The constitution was unsuccessful. There were constant quarrels between the legislatures and governors, and the British government. There were difficulties regarding finance, and, in Lower Canada, the position was aggravated by a conflict of races, British and French. In 1838 the British Government found it necessary to suspend the constitution of Lower Canada. It was at this juncture that Lord Durham was appointed Governor-General.

The Development of Responsible Government.—Lord Durham's Report was acted on almost at once. In 1840 Lord John Russell's Act reuniting Upper and Lower Canada was passed. This Act provided for a legislature of two houses—a Legislative Council and Legislative Assembly. The Act also introduced a large measure of self-government; indeed responsible government in Canada dates from it. Gradually measures were passed establishing the principles of British parliamentary government in Canada. The civil service was reformed; judges and officials were forbidden to sit in either House. The colony was given complete control of the essential administrative services, and freed from interference in matters of trade and commerce. An Act was passed allowing the legislature to reduce or repeal duties imposed by British Acts on foreign goods. In 1856 the upper House was made elective. In the provinces, too, responsible government was gradually introduced. But the constitution did not work smoothly. Government was made difficult by repeated deadlocks. Moreover, Canada was quickly expanding westwards, and new areas were calling for representation. It was recognised also that if Canada were to hold on to the western territories she must be able to act as a unit, for the United States had acquired both unity and strength. Federation had been vaguely talked of for some time, but it became a reality when, in 1858, the Cartier-Macdonald government, a coalition ministry of both parties, made federation part of their policy.

Federation.—In 1864 a conference was called at Charlotte-

town to discuss the matter. Canada and the provinces sent delegates to this conference, where it was agreed to press forward with federation. A convention was held at Quebec in 1864, and this convention passed seventy-two Resolutions known as the Quebec Resolutions, which ultimately formed the basis of the Canadian constitution Act, the British North America Act, 1867. The process of fusion was not an easy one: in particular the maritime provinces, New Brunswick, Nova Scotia and Prince Edward Island, at first desired a union of their own; but, after negotiation, they ultimately agreed to join with the other areas. In Canada, as in the United States, there were difficulties in fitting "state" rights or claims into a union; but in Canada, when the union was made, the centre was given much more power than in the United States. Sir John Macdonald, the leading figure in the movement for federation, expressed the idea of the strong centre at the Quebec Conference, in the following words:

"The various states of the adjoining Republic had always acted as separate sovereignties. The New England states, New York State and the southern states had no sympathies in common. They were thirteen individual sovereignties, quite distinct the one from the other. The primary error at the formation of these constitutions was that each state reserved to itself all sovereign rights, save the small portions delegated. We must reverse the process by strengthening the general government and conferring on the provincial bodies only such powers as may be required for local purposes. All sectional prejudices and interests can be legislated for by local legislatures. Thus we shall have a strong and lasting government under which we can work out constitutional liberty as opposed to democracy, and be able to protect the minority by having a powerful central government."

The Process of Fusion.—As originally constituted, the "Dominion," as Canada was now designated, consisted of Upper and Lower Canada (now Ontario and Quebec), Nova Scotia and New Brunswick. At the beginning, there was friction with some of the provinces; in Nova Scotia for example, there was an agitation for separation, but this was settled by the province getting a more favourable financial settlement. The constitution made provision for the admission into the federation of British Columbia, Prince Edward

Island, Rupert's Land, the North-West Territory and Newfoundland. Newfoundland never availed itself of the provision. In 1869 the North-West Territory and Rupert's Land, which was the property of the Hudson's Bay Company were purchased. The province of Manitoba was created from part of this territory and it was admitted to the union in 1870. British Columbia was admitted in 1871 and Prince Edward Island in 1873. Alberta and Saskatchewan, formed from the provisional districts of Alberta, Athabasca, Assiniboia and Saskatchewan were admitted in 1905. Both these were previously part of the North-West Territory.

Territories.—In addition to the Provinces, Canada has also two territories—the Yukon Territory, which was constituted as a separate unit in 1898. It is governed by a Comptroller and a Territorial Council of three elected members. The North-West Territories are the remnant of the old North-West Territory left after the creation of Manitoba, Alberta and Saskatchewan, and the Yukon Territory, together with all adjacent islands and British territories not in any other Province. These territories were reconstituted in 1905. They are governed by a Commissioner, a Deputy Commissioner and five councillors appointed by the Governor-General in Council. The Commissioner in Council has power to make ordinances, subject to the control of the Dominion government, for the government of the Territories.

Australia : Historical—The Earliest Type of Government.—The first important constitutional instrument passed for Australia by the British legislature was the Australian Colonies Constitution Act 1850. For many years after 1770, the date on which Captain Cook took possession of the eastern portion of the continent in the name of King George III, Australia was looked on with little interest by the British government. It was regarded not as a potential Dominion but as a penal settlement. In 1784 an Act was passed in which power was taken to appoint places in New South Wales to which felons should be sent. In 1829 possession was taken by the British Crown of the whole continent, including Van Diemen's Land, now Tasmania. Up to 1823 the form of Government was despotic, but in that year a Legislative Council, composed of nominated members, was created to assist the Governor. In 1842 an Act was passed creating a partially elective legislature, but the executive

government still remained in the hands of the Governor, who acted under the directions of the Home government.

Early Constitutional Development.—The Australian Colonies Constitution Act 1850, made provision for the creation of legislatures for the three "states" then in existence—New South Wales, Van Diemen's Land, and South Australia. The legislatures were still partly nominated, but a considerable measure of self-government was conferred. The control of public lands and of the civil service still remained in the hands of the British government. The legislatures were empowered to impose customs and taxes, but they were forbidden to pass legislation repugnant to Imperial laws. There were also certain restrictions regarding appropriation bills. The law caused an outcry in the colonies, and in 1855 an amending measure was passed giving practically complete responsible government to New South Wales. The control of both Crown lands and the civil service passed to the colonial government. In the same year Victoria was given responsible government. This state had previously been created out of the southern or Port Philip area of New South Wales. In 1856 both Tasmania and South Australia were given constitutions similar to that of New South Wales. These constitutions were conferred by Imperial legislation, but Queensland, which had previously been known as the Northern or Moreton Bay District of New South Wales, was given its constitution by Letters Patent, in 1859. Western Australia did not receive full parliamentary government till 1893. The important point to note in the development of Australia is that each state was treated as an individual unit. The same type of constitution was granted to all, but each maintained direct relations with the British government. This is the reason why, in the creation of the Commonwealth or federation, so much emphasis was placed on "state" rights.

The Growth of Federalism.—The process of federation in Australia was slow. Till 1861 such central authority as existed was possessed by the Governor of New South Wales, who was called Governor-General. In 1861 the designation Governor-General was dropped and all governors were regarded as equal. Federation began to be talked about, and the movement towards unity received some impetus from the foundation of a French penal settlement at New Caledonia in 1864. The activities of Germany and the United

States in the Pacific also had some influence, but it was not till 1883 that the first tangible steps were taken towards forming a constitution. In 1883, at a representative conference held at Sydney—which was attended by delegates from Fiji and New Zealand also—a resolution was passed in favour of creating a Federal Australasian Council to deal with marine defence, the relations of Australasia with the Pacific islands, the prevention of the influx of criminals, the regulation of quarantine, and such other matters of general Australasian importance as might be referred to it by the British Crown or the Australasian legislatures. The result of this conference was the Federal Council of Australia Act, 1855, which established not a federation but a confederation. No executive or judicial authority was created by the Act, and membership was optional.

The Sydney Convention and the Constitution Act.—It soon became clear that a closer union was necessary. With growing trade, uniformity in banking and company legislation became necessary, and there was the ever-present problem of "state" customs duties. Moreover, external trade demanded common action, and the emergence of Japan as an international power brought defence into the forefront. In 1889 the New South Wales government convened a representative conference at Melbourne in 1890, which passed a unanimous resolution in favour of a central or federal government. As a result of this conference a representative convention was summoned at Sydney in 1891. This convention laid down the general principles of federation, but it was not till nearly ten years later (1900) that the constitution Act was passed. The general principle accepted by the Sydney convention was that the powers, privileges and territórial rights of the existing states should remain intact, except to the extent that surrender of authority, as agreed upon, might be made to form a national government. The convention accepted the United States type of constitution in preference to the Canadian. It appointed sub-committees to draft a bill, and after long discussions and negotiations, a bill was framed, which, after amendment, was presented to the British government for acceptance. It should be added that, at every stage, the states took every precaution to safeguard their rights. The bill was the subject of a referendum on two separate occasions, and it was ultimately accepted by

all the states except Western Australia. It was the basis of the Commonwealth of Australia Constitution Act, 1900, and the Commonwealth was finally proclaimed on January 1st 1901.

Part of the Preamble to the Act reads :—

"Whereas the people of New South Wales, Victoria, South Australia, Queensland and Tasmania have agreed to unite in one indissoluble Federal Commonwealth. . . . And whereas it is expedient to provide for the admission of other Australasian colonies and possessions of the Queen."

Western Australia.—It will be noted that Western Australia was not included as a consenting party. Western Australia joined the federation after the bill was passed, but even now there is agitation in favour of secession in that State. The units of the Commonwealth, it may be noted, were defined in the Act as "states."

South Africa : Historical—Early History.—The Union of South Africa was constituted under the South Africa Act, 1909. Under this Act the colonies of the Cape of Good Hope, Natal, the Transvaal and the Orange River Colony were united under one government under the name of the Union of South Africa. The early history of South Africa is one of struggle between the British and Dutch, and the co-existence of these two national types has coloured the whole history of the territory. The first part of South Africa to come under the British Crown was the Cape of Good Hope, which, captured from the Dutch in 1795, restored to them in 1802 and re-captured in 1806, was finally ceded to Great Britain in 1814. For several years the colony was under military government, but from about 1820 it became a popular centre for emigration from Great Britain. In due course demands were made for representative government. In 1825 a small Council was established, and in 1833 a Legislative Council was created, on a basis of nomination. In 1835 the Great Trek commenced. The Great Trek was the wholesale migration of the local Dutch or Boer population from the eastern areas of the Cape of Good Hope to the areas later known as the Orange River Colony or Orange Free State and the Transvaal. The Boers were then granted internal independence. In 1853 a constitution was granted to the Cape of Good Hope. The government was entrusted to a Governor and a bicameral legislature, both houses of

which were elected. Responsible government was introduced in 1872.

Growth of Responsible Government in Natal and the Boer States.—Natal in the meantime had attracted thousands of emigrants from Great Britain. It was annexed to Cape Colony in 1845, but in the same year a separate government was set up for it, administered by a Lieutenant-Governor who was under the control of the Governor of Cape Colony. The Lieutenant-Governor was given an executive council, composed of himself and four chief officials, and a Legislative Council, official in character. In 1856 Natal was given a separate government with a legislature, the majority of which was elected. In 1893 the Imperial Parliament passed a constitution Act, under which responsible government was established. In 1877 the Transvaal was annexed; then followed a period of conflict culminating in the South African War of 1881. After this, usually known as the first South African war, the Boer "states" passed under British domination, but the right of the Boers to self-government had been conceded in the peace terms.

The Growth of Federation.—Federation as a solution to the difficulties of the South African situation had appealed to Governors and other leading officials of South Africa some time before the first South African war. Sir George Grey, for example, made a proposal for the creation of a federation which should include, with their consent, the Boers in the Orange Free State and in the Transvaal. Sir George Grey's idea was followed up by Sir H. Barkly in 1872, but the first substantial suggestions for union were made by Lord Carnarvon, who in 1875 put forward proposals for a federation on the Canadian model. Sir Bartle Frere was sent out as Governor of Cape Colony to carry out Lord Carnarvon's policy; with him was associated Froude, the historian, who took part in the negotiations. Unfortunately, the idea of federation did not appeal to the different areas. The Cape of Good Hope had already obtained a constitution. Natal had not yet been given responsible government and the Boers in the Transvaal and in the Orange Free State wished to preserve their independence. The truth was that the proposals of the British government were premature. The people in South Africa were suspicious of them. They were not ready to be linked up together, especially as the suggestion

came from outside. A type of federation was ultimately achieved thirty-four years later, but in the meantime there were two wars and a great deal of economic dislocation.

In 1877, the year in which the Transvaal was annexed to the British Crown, an infructuous Act was passed by the Imperial government which provided for the union under one government, of such South African colonies and states as might agree thereto and for the government of such a union. This Act was drafted on the model of the British North America Act, but it never came into operation. In fact, soon after it was passed, in 1881, the Boers revolted. Soon after the war economic forces clearly pointed to the necessity of a really effective union. The existence of gold, and the discovery of diamonds led to railway construction and industrial development which required common regulation. The railway outlet from the Boer territories, for example, was through the British territories of the Cape and Natal ; this led to difficulties connected with customs receipts. In 1889 an agreement was reached under which a customs union was established between the Cape and the Orange Free State. This union was later joined by Basutoland and Bechuanaland and Natal. The question of railway communications also led to a great deal of trouble. This trouble, which had many other roots, ultimately culminated in the second South African war, which ended in 1902.

After the second South African war it speedily became apparent that union was the only method of solving both the administrative and economic problems of the different provinces. Responsible government was granted to the conquered areas, so that each province—the Cape, Natal, the Transvaal and the Orange Free State—was free to pursue its own policy. Certain common organs disappeared. The Inter-Colonial Council was abolished ; the South African Constabulary was replaced by local police forces ; there was confusion in the policy followed towards indigenous races ; and there were difficulties arising from customs and railway administration, though with regard to these there was still some attempt at joint action. In 1906-7 a rebellion of the indigenous inhabitants in Natal raised acute questions of defence, and with the development of agriculture it became clear that common action was necessary to prevent pests and

pestilences. The need for a single court of appeal was also felt, and was voiced at the Colonial Conference in 1907.

The immediate cause of union was financial, arising from railway rates and customs. In 1908, when these subjects came under discussion at the Inter-Colonial Conference on customs and railway rates it became apparent that a closer union was necessary, for the Transvaal Government had given notice of withdrawal from the Customs union. The delegates accordingly recommended to their own legislatures that delegates should be sent to a convention to draft a constitution. The states represented at the convention were the Cape, Natal, the Transvaal and the Orange River Colony, the name of which in the constitution Act was changed to the Orange Free State. Representatives also attended, with a watching brief only, from Southern Rhodesia, which ultimately did not come into the Union. In due course the convention drafted a constitution which was accepted by the four legislatures and by the people of Natal, where a referendum was taken.

It was generally expected that the constitution would provide for a federal form of government, but federation was rejected in favour of unity, or what was called in the South Africa Act "legislative union." The constitution Act was passed by the Imperial Parliament in 1909, and the Union came into being on 31st May, 1910.

4. DIVISION OF LEGISLATIVE POWERS IN CANADA, AUSTRALIA AND SOUTH AFRICA

Comparison of Canadian and Australian Federation.—Before proceeding to describe in detail the constitutional system of Canada, Australia and South Africa, several points of a general character have to be noted. The first is the difference in the federal organisation of Canada and Australia. As has been noted, the Union of South Africa is not strictly speaking a federal type of government.

The essential quality of the Canadian type of federalism is the strength of the centre : that of the Australian type is the strength of the units, or states. In the Canadian constitution the residual powers are given to the centre, in the Australian to the states. The difference in the type is due to historical causes, as indicated above ; in Canada, the need of union became urgent not only because of deadlocks in the previous form of government but also because of defence. A

strong central power was thus necessary. In Australia the main force leading to union was economic. There was no urgent problem of defence. The states moreover have developed their own personalities. Union therefore was accomplished only by the states retaining the maximum of power consistent with the creation of a central government. The Australian federalism is the same as that of the United States; indeed, it has been held by some authorities that the Canadian federal union is not a true type of federalism, because, while in the United States the residual powers are allocated to the states, in Canada they are allotted to the centre. In other words, in the creation of the Canadian constitution, the provinces were given only those powers not deemed necessary for the centre. On this ground some have held that Canada is more a unitary than a federal type of government.

In the Canadian constitution the centre, or Dominion government only has direct relations with the Imperial government. The heads of the provincial executives, called Lieutenant-Governors, are appointed and may be removed by the Governor-General acting on the advice of his ministers. In Australia, the head of each state, or Governor, is appointed and removable by the Crown, and is responsible to the Crown, not to the Governor-General; and each state, as well as the Commonwealth, has direct relations with the Imperial government. In Canada, provincial legislation is subject to disallowance by the Dominion, not by the Imperial Government. In Australia, legislation in the States is subject to disallowance not by the Commonwealth but by the British government.

In the case of Canada the High Commissioner in London represents Canada; the Agents-General of the provinces have no direct relations with the British Government. In the case of Australia the High Commissioner represents the Commonwealth, but the Agents-General of the states have direct access to the Dominions Office.

In actual fact, the above theoretical position has been somewhat altered by legal decisions. It has been ruled by the Privy Council, for example, that the Lieutenant-Governors in the Canadian Provinces represent the Crown, and can exercise the royal prerogative of administration just as the Australian state governors do. Moreover the provincial

legislative field in Canada has been ruled to be wider than that intended in the constitution ; indeed, in 1934, an analysis of 119 judgments of the Privy Council in constitutional cases, given since 1867, revealed the fact that legal interpretation had on the whole reversed the intention of the founders of the constitution, so much so that a movement was set afoot to have the constitution revised in order to have the original intention restored. In Australia, on the other hand, the opposite tendency has been in evidence. The courts have given the Commonwealth more powers than the wording of the constitution seems to suggest. Further, the British government has ruled that, in respect to foreign affairs, they will deal with the Commonwealth only, though the states have not admitted that this procedure is correct.

Division of Legislative Powers in Canada—Powers of the Dominion.—The legislative powers of the centre in Canada and Australia are dealt with in detail in the constitution Acts. The Canadian constitution (section 91) confers "exclusive legislative authority" on the Parliament of Canada in respect to a list of twenty-eight subjects—viz.—(1) the public debt and property ; (2) the regulation of trade and commerce ; (3) the raising of money by any mode or system of taxation ; (4) the borrowing of money on the public credit ; (5) the postal service ; (6) the census and statistics ; (7) militia, military and naval service, and defence ; (8) the fixing of and providing for the salaries and allowances of civil and other officers of the government of Canada ; (9) beacons, buoys, lighthouses and Sable island ; (10) navigation and shipping ; (11) quarantine and the establishment and maintenance of marine hospitals ; (12) sea coast and inland fisheries ; (13) ferries between a province and any British or foreign country or between two provinces ; (14) currency and coinage ; (15) banking, incorporation of banks, and the issue of paper money; (16) Savings Banks ; (17) weights and measures ; (18) bills of exchange and promissory notes ; (19) interest ; (20) legal tender ; (21) bankruptcy and insolvency ; (22) patents of invention and discovery; (23) copyrights; (24) Indians, and lands reserved for the Indians; (25) naturalisation and aliens; (26) marriage and divorce; (27) the criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters; and (28) the establishment, maintenance and management of penitentiaries.

Finally, there is this item: "Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the provinces." This important provision was meant to make certain that the provinces should never encroach on the sphere of the Dominion; in practice, the courts interpreted the constitution in favour of the provinces.

Powers of the Provinces.—The powers of the provinces are indicated in section 92 of the constitution Act, which reads: (1) the amendment from time to time, notwithstanding anything in this Act, of the constitution of the province, except as regards the office of Lieutenant-Governor; (2) direct taxation within the province in order to the raising of a revenue for provincial purposes; (3) the borrowing of money on the sole credit of the province; (4) the establishment and tenure of provincial offices and the appointment and payment of provincial officers; (5) the management and sale of the public lands belonging to the province and of the timber and wood thereon; (6) the establishment, maintenance and management of public and reformatory prisons in and for the province; (7) the establishment, maintenance and management of hospitals, asylums, charities and eleemosynary institutions in and for the province, other than marine hospitals; (8) municipal institutions in the province; (9) shop, saloon, tavern, auctioneer and other licences in order to the raising of a revenue for provincial, local or municipal purposes; (10) local works and undertakings other than such as are of the following classes: (*a*) lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province; (*b*) lines of steamships between the province and any British or foreign country; (*c*) such works as, although wholly situate within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces; (11) the incorporation of companies with provincial objects; (12) the solemnisation of marriage in the province; (13) property and civil rights in the province; (14) the administration of justice in the province, including the constitution, maintenance and organisation of provincial courts, both of civil and of criminal

jurisdiction, and including procedure in civil matters in those courts ; (15) the imposition of punishment by fine, penalty or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section ; and (16) generally all matters of a merely local or private nature in the province.

It will be noted that item 10 in the provincial list of subjects confers additional powers on the Dominion, for it gives power to the Dominion Parliament to declare which works may be of general advantage to Canada or for the advantage of two or more provinces. The Dominion Parliament has also full power to impose taxes, to raise loans and to manage its own property. It can also legislate on trade and commerce. This power has been considerably curtailed by the courts, which have ruled that the power can be used only for important political purposes, such as the regulation of trade in arms.

Education.—The subject of education is dealt with in a special section—section 93, the gist of which is that education is the exclusive domain of the provinces. Certain reservations are however made in the case of denominational schools. The provinces were prevented from making laws adversely affecting denominational schools in existence at the creation of the Dominion, and, where separate or dissentient schools existed at the union or were created afterwards, provision was made for an appeal to the Dominion, which, if it thought fit could pass "remedial" laws irrespective of a provincial legislature.

Other Items.—The Dominion and provincial legislatures were given concurrent power to make laws for agriculture and immigration, but the appropriate section specifically says that provincial legislation must not be repugnant to Dominion legislation. Certain powers were also given to the Dominion legislature to make provision for the uniformity of all or any of the laws relative to property and civil rights and to the procedure of courts in Ontario, Nova Scotia and New Brunswick.

Amendment of the Constitution.—An important feature of the Canadian constitution is that the constitution Act, except for minor issues, cannot be amended either by the Dominion or by the provinces ; the amending authority is the Imperial government, which normally would act only on the advice of the Dominion government, which in its turn would consult the provinces. Though no major amendment to the

Canadian constitution has been made since 1867, the courts, as already indicated, have materially affected it by various interpretations, the effect of which has been stated to be the reverse of what the makers of the constitution intended. Most of the important decisions on constitutional issues have been given by the Privy Council to which all important constitutional cases have been referred either by the final courts of appeal in the Provinces or by the Supreme Court of Canada. This result of judicial decision has led some to doubt whether the Canadian constitution was sufficiently elastic to meet modern developments. In some cases it has proved inadequate. Like all written constitutions, it is not easily adaptable to changing conditions. It has been argued, for example, that the Senate has failed in its original purpose, as members are said not to represent provincial interests, as they were intended to. Again, the list of Dominion and provincial subjects is in need of revision, especially in regard to the control of companies and the development of electricity from hydraulic power. Also, though it is impossible to deal with this here, the financial provisions of the constitution have proved unsuitable, especially in the case of certain provinces. Nevertheless, there can be no doubt regarding the respect with which the constitution is regarded in Canada, the conclusive evidence of which is the provision in the Statute of Westminster excluding it from "repeal, amendment or alteration" save by the original constitution-making authority, the Imperial Parliament.

Division of Legislative Powers in Australia—Powers of the Commonwealth.—The powers of the Commonwealth Parliament are contained in section 51 of the Constitution Act, which reads :—

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to : (1) trade and commerce with other countries, and among the states ; (2) taxation ; but so as not to discriminate between states or parts of states ; (3) bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth ; (4) borrowing money on the public credit of the Commonwealth ; (5) postal, telegraphic, telephonic and other like services ; (6) the naval and military defence of the Commonwealth and of the several states, and the control

of the forces to execute and maintain the laws of the Commonwealth ; (7) lighthouse, lightships, beacons and buoys ; (8) astronomical and meteorological observations ; (9) quarantine; (10) fisheries in Australian waters beyond territorial limits ; (11) census and statistics ; (12) currency, coinage and legal tender ; (13) banking, other than state banking ; also state banking extending beyond the limits of the state concerned, the incorporation of banks and the issue of paper money ; (14) insurance, other than state insurance ; also state insurance extending beyond the limits of the state concerned ; (15) weights and measures ; (16) bills of exchange and promissory notes ; (17) bankruptcy and insolvency ; (18) copyrights, patents of inventions and designs and trade marks ; (19) naturalisation and aliens ; (20) foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth ; (21) marriage ; (22) divorce and matrimonial causes ; and in relation thereto, parental rights, and the custody and guardianship of infants ; (23) invalid and old-age pensions ; (24) the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the states ; (25) the recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the states ; (26) the people of any race, other than the aboriginal race in any state, for whom it is deemed necessary to make special laws ; (27) immigration and emigration ; (28) the influx of criminals ; (29) external affairs ; (30) the relations of the Commonwealth with the islands of the Pacific ; (31) the acquisition of property on just terms from any state or person for any purpose in respect of which the Parliament has power to make laws ; (32) the control of railways with respect to transport for the naval and military purposes of the Commonwealth ; (33) the acquisition, with the consent of a state, of any railways of the state on terms arranged between the Commonwealth and the state ; (34) railway construction and extension in any state with the consent of that state ; (35) conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state ; (36) matters in respect of which this constitution makes provision until the Parliament otherwise provides ; (37) matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any state or states but so that the

law shall extend only to states by whose Parliaments the matter is referred, or which afterwards adopt the law; (38) the exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the states directly concerned, of any power which can at the establishment of this constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia; and (39) matters incidental to the execution of any power vested by this constitution in the Parliament or in either house thereof, or in the government of the Commonwealth, or in the federal judicature, or in any department or officer of the Commonwealth.

Further exclusive powers of a consequential nature were given to the Commonwealth in respect to a capital and to the Commonwealth civil service.

Powers of the States.—In Australia the states reserve the power not expressly granted to the Commonwealth. In cases where laws conflict, the greater, i.e., the Commonwealth law prevails. The states in Australia are also empowered to confer powers on the Commonwealth in matters otherwise reserved to them. The states may also alter their constitutions provided they do not disturb the constitutional division of legislative powers. The Commonwealth Act also contains a special provision regarding amendment of the constitution, to which reference has previously been made. This provision, Chapter VIII of the Act, lays down an elaborate method of amendment. A proposal for amendment must first pass both Houses—by absolute majorities, and then be submitted to a referendum. The referendum must also be held if the proposal is passed by one house and is rejected twice by the other. To become law the proposal must be approved at the referendum by a majority of states and of voters; and if a proposal especially affects one state, the majority of voters in that state must approve it.

In Australia the interpretation of the constitution lies with the Commonwealth High Court. A special provision was included in the constitution to this effect. The Australian constitution has been somewhat modified by judicial interpretation but, as in the case of Canada, there are doubts as to the adequacy of the constitution in certain respects. The subjects on which there has been most dispute are the powers of the Commonwealth in order to prevent overlapping

in trade disputes, and in commercial and industrial affairs. Considerable chaos in labour matters has been caused by the concurrent power of the centre and the states to regulate disputes, including the prescribing of minimum wages. The control of corporations and monopolies has also led to difficulties, and many thinkers would prefer more powers conferred on the centre in respect of such subjects. As in Canada, too, the financial settlement has not proved acceptable to all the states. Also the Senate, as in Canada, is alleged not to have served its true federal purpose.

The Indian Parallel.—The division of legislative powers in Canada and Australia has been examined in some detail in order that it may be compared with the distribution of powers contained in the legislative lists in the Seventh Schedule to the Government of India Act, 1935, read with the general constitutional provisions in Part V of the Act. A similar comparison may also be made with the Devolution Rules framed under the Government of India Act, 1919; these Rules, applicable to a unitary constitution, give a clear indication of the existence of federal elements in the Montagu-Chelmsford scheme.

Division of Legislative Powers in the Union of South Africa.—The Union of South Africa is a unitary type of government, though, at the time of the Union, the "states" had powers which they might have surrendered, and in fact did surrender. The South Africa Act however, is based on the direction, superintendence and control of the Governor-General. The legislative powers of the Union are of the widest character. The South African Parliament was empowered simply to make laws for the peace, order and good government of the Union. No powers were conferred in respect of specific subjects. The provinces, on the other hand, were limited to the following subjects, on which they were empowered to make "ordinances"—

(1) Direct taxation within the province, in order to raise revenue for provincial purposes; (2) the borrowing of money on the sole credit of the province, with the consent of the Governor-General-in-Council and in accordance with regulations framed by Parliament; (3) education, other than higher education, for a period of five years and thereafter until Parliament otherwise provides; (4) agriculture to the extent and subject to the conditions to be defined by Parlia-

ment; (5) the establishment, maintenance and management of hospitals and charitable institutions; (6) municipal institutions, divisional councils and other local institutions of a similar nature; (7) local works and undertakings within the province, other than railways and harbours, and other than such works as extend beyond the borders of the province, and subject to the power of Parliament to declare any work a national work and to provide for its construction by arrangement with the provincial Council or otherwise; (8) roads, outspans, ponts and bridges other than bridges connecting two provinces; (9) markets and pounds; (10) fish and game preservation; (11) the imposition of punishment by fine, penalty, or imprisonment for enforcing any law or any ordinance of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section; (12) generally all matters which in the opinion of the Governor-General-in-Council are of a merely local or private nature in the province; and (13) all other subjects in respect of which Parliament shall by law delegate the power of making ordinances to the provincial Council.

Provincial legislatures can also recommend to the Union Parliament the passing of any Act on a subject in which they cannot legislate, and they can take evidence against any private bill promoted in the Parliament. Bills passed by provincial Councils must be presented for assent to the Governor-General-in-Council, who is required to assent or not to assent within a prescribed period. The head of the provinces—called the Administrator—has no power of veto.

The Status of the Provinces.—The laws or ordinances of the provincial Councils must not be "repugnant" to any Act of the Union legislature, which may at any time override the provincial legislatures. This power of course is not used in respect to matters of purely local concern, and experience has shown that it is necessary to widen the powers of the provinces, especially in provincial matters. The list of subjects given above shows that the provincial Councils originally had little more power than a county council in Britain or a district board in Bengal. Even in agriculture, the control was limited by conditions to be defined by Parliament. In finance, the provinces were permitted to raise revenue from certain kinds of fees, licences and dues, such as education fees levied in elementary schools, game licences, trade

licences, dog licences and totalisator fees. The Councils were specifically forbidden to obtain revenue or to make laws in respect to many other subjects—mostly the usual federal items—but the financial settlement proved very unsatisfactory and has been revised more than once. The position in South Africa in many respects is analogous to that in British India under the pre-Montagu-Chelmsford constitution, but the extent of the subordination of the provinces in South Africa may be gauged by the fact that in 1917 a commission actually suggested that the provincial Councils should be reduced to the status of local bodies.

Powers of the Imperial Government.—The Imperial government has no control over provincial legislation in South Africa, but it can make representations to the Union government regarding any matter which may affect Imperial relations. The chief subjects on which representations have been made are the grant of licences to Indians to trade in Natal, and the exercise of the municipal franchise by Indians. Under section 147 of the constitution Act, the control and administration of native affairs and of matters specially or differentially affecting Asiatics throughout the Union are vested in the Governor-General-in-Council, to whom the powers vested in the Governors before the constitution were specifically transferred.

5. THE EXECUTIVE GOVERNMENT IN CANADA, AUSTRALIA AND SOUTH AFRICA

The Governors-General, Governors, etc.—The head of the Executive in the three Dominions is the Governor-General, who is appointed by the Crown, on the advice of the Imperial government. In every case the Dominion concerned is consulted before an appointment is made, but the ultimate power of appointment lies with the Crown. In the case of the provinces or states, the methods of appointment differ in the federations. In Canada the heads of the provinces, styled Lieutenant-Governors, are appointed by the Governor-General of Canada on the advice of his ministers. The Governors of the Australian States are appointed by the Crown on the advice of the Secretary of State for the Dominions, and in their case, as in the case of Governors-General, the wishes of the states are ascertained prior to the appointments being

made. The heads of the South African provinces, styled Administrators, are appointed by the Governor-General.

Tenure of Appointment.–The tenure of Governor-General and Governors is normally five years, but it may be reduced or extended at the pleasure of the Crown, as advised by the Cabinet, or the Dominions Secretary of State. The tenure of the Canadian provincial governors is at the pleasure of the Governor-General, but a minimum of five years is laid down in the constitution, unless "for cause assigned," which has to be communicated by the Governor-General in writing within a specified period to the Canadian legislature. The same conditions of appointment apply to the provincial Administrators in South Africa. The constitution Acts also provide for the appointment of deputies to perform such functions as may be deputed to them, but in the case of the Union of South Africa deputies can be appointed only in the absence of the Governor-General. There is also statutory power for appointing deputies to Lieutenant-Governors in Canada and to Administrators in South Africa. Provision is also made for the pay of the Governor-General and Governors at a sum fixed by statute, and unalterable during a tenure; the emoluments of Lieutenant-Governors and Administrators are fixed by the respective Parliaments.

Powers of Governors-General and Governors.—In the various constitution Acts the Governors-General are vested with the widest powers—each constitution vests the executive power in the sovereign. The executive power is exercisable by the Governor-General as the King's representative, and this implies that, in addition to the normal duties of carrying on the government, the Governor-General exercises, or administers the royal prerogative, including the prerogative of mercy. The powers of the Governor-General, accordingly, and of Governors in Australia within their restricted limits, are those of the Crown in England, except that they cannot declare war or make peace, make treaties, annex territory, accredit diplomatic agents, confer titles or issue coinage, except in cases where the right is specially conceded.

Responsible Government.—In actual practice, the powers of the Governors-General and Governors are the powers of their governments; and the governments consist of the Governors acting with their ministers, who are responsible to the legislatures. In other words, while the government (in

its widest sense) in the United Kingdom is the King-in-Parliament, in the Dominions it is the Governor-General, or Governor-in-Parliament. In each Dominion the constitution creates a council to assist the Governor-General—e.g., the King's Privy Council in Canada, the Federal Executive Council in South Africa. Actually, the Dominions have adopted the British system of cabinet government, as have also the states of Australia and the provinces of Canada, though the latter do not observe British precedents so strictly. The constitution Acts do not recite in detail the relations of the executive and the legislatures, though it should be noted that, in the case of the Irish Free State, statutory provision was made for responsible government. Responsible government in the case of the Dominions under examination rests, as it does in the United Kingdom, on constitutional usage ; the statutory councils in effect mean the cabinets, though in theory the councils may be more extensive—for example, it is a common practice for ex-ministers to be members of the councils, and the King's Privy Council in Canada contains members who have never been ministers but who have rendered eminent public service, after the manner of the Privy Council in the United Kingdom. The Governor-General presides at meetings of his Council only when Orders-in-Council are issued, except in Canada where Orders-in-Council are presented to him ; in normal circumstances, he never presides at meetings. Members of the cabinet must be members of the legislature : as in Britain, the leading members belong to the lower house. If a minister is chosen from outside Parliament then convention demands that he gets a seat within a specified time. In the Irish Free State membership of the legislature was essential by statute, and the Irish Free State shared with South Africa (and also India under the Government of India Act, 1935) the peculiar feature that members might speak in either house, though they could vote only in their own house.

At the Imperial Conference of 1926 a resolution was carried to the effect that "the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government or any

department of that Government." This resolution sums up the actual powers of a Governor-General in relation to reservation and disallowance, which have already been discussed above. So long as reservation of any kind or disallowance is still statutory, it is, in theory, the duty of the Governor-General to advise the Imperial government, though actually the advice he would give would be that of his government. All other powers, such as the veto over the legislature of the provinces possessed by the Governor-General of Canada, are exercised on the advice of the ministry. The cabinets in the Dominions vary in number, as they do in the United Kingdom. In Canada the number is usually about eighteen and in Australia and South Africa about eleven to thirteen.

6. THE LEGISLATURE IN THE DOMINIONS

The constitution of Canada makes provision for a legislature in the following terms : "There shall be one Parliament for Canada, consisting of the Queen, an Upper House styled the Senate and the House of Commons." Section 1 of the Australian constitution Act declares that "The legislative power of the Commonwealth shall be vested in a Federal Parliament which shall consist of the Queen, a Senate and a House of Representatives." The Constitution of South Africa says : "The legislative power of the Union shall be vested in the Parliament of the Union, which shall consist of the King, a Senate and a House of Assembly." In each constitution, provision is made for the bicameral system. Each constitution provides also for the structure of the legislature, the privileges of members, the qualifications of members and of electors, regular meetings, maximum duration and also matters essential to the conduct of legislative business such as the election of a Speaker, the filling of vacancies and the number essential to make a quorum.

The Franchise.—So far as the franchise is concerned it may be said that, in general, the lower houses are constituted on a widely democratic basis ; the franchise approximates to adult male and female suffrage, with certain residential qualifications, but in South Africa the franchise, except in the Cape Province, is confined to Europeans or persons of European descent. There are also minor franchise disabilities in the case of aboriginals in Australia and North American Indians in Canada. Ballot voting has been univessally

adopted, but the method of election varies. Proportional representation has been adopted in some cases, especially in the states or provinces. Periodical redistribution of seats on a census basis takes place in all the three Dominions under examination. In Australia, compulsory voting has been introduced in the Commonwealth and some of the states.

Qualifications of Membership.—The qualifications for membership of the legislature vary from Dominion to Dominion. Members must be either natural born citizens or must have been naturalised for a specified period, such as five years : there is also usually a residence qualification, and, in some cases, an age qualification, e.g., in the Canada and South African Senates the minimum age is 30 years ; there is a property qualification also in the case of the Canadian and South African second chambers. In South Africa members must also be of European descent.

Members are paid, and in the case of Australia they are granted free-travelling facilities. The duration of Parliament is also limited, three years in Australia and five years in Canada and South Africa. They may of course be dissolved at shorter intervals by the Governor acting on ministerial advice.

Upper Houses—Constitution and Duration.—The upper houses are constituted in the following manner. The Canadian Senate consists of 96 members—originally the number was 72, but it was increased by an amendment to the constitution made in 1915. The number may not exceed 104. The members are nominated for life. Membership is distributed among the provinces on a population basis. In Australia the Senate consists of 36, at least six for each of the original states voting as one electorate. The Senate is re-elected in rotation. The tenure is for six years, but one-half retire every three years. In South Africa the Senate consists of 40 members ; eight are elected for each province by the members of the provincial Council and the Union representatives of the province ; and eight, four of whom are selected for their knowledge of the non-European races, are nominated by the Governor-General-in-Council. Under the Representation of the Natives Act, 1936, four additional senators are elected by native voters. Senators so elected (one for each of the four electoral areas into which the Union is divided) sit for five years, notwithstanding any dissolution of the Assembly.

The House of Commons in Canada, as already indicated, is elected for a maximum of five years by the people. The quota of the provinces is settled by the decennial censuses. The House of Representatives in the Commonwealth has a maximum duration of three years, and the number, as the constitution says, "shall be as nearly as practicable, twice the number of senators." The number of members elected from the states must be in proportion to the number of the people, but a maximum of five members is prescribed for each of the original states. The maximum duration of the House of Assembly in South Africa is five years, and the number of members is determined on the basis of the censuses by periodical delimitation commissions.

Relations of the Houses.—The relationship of the upper and lower houses in the Dominions has to some extent been defined in the constitutions, e.g., both the Commonwealth and Union constitutions provide an elaborate procedure in case of disagreement between the two houses. Limitations on the powers of the upper houses have also been prescribed in the constitutions, especially in respect to money bills, which must, as in the United Kingdom, originate in the lower houses. In several cases, especially in the Australian states, there have been acute disputes between the two houses; in the case of Queensland the dispute ended in the abolition of the upper chamber. In general, the relations of the two houses approximate to those of the House of Lords and House of Commons, but the lower houses in some cases are more jealous of their rights than the House of Commons, a jealousy which arises from local causes, the chief of which is a greater tendency on the part of second chambers to interfere.

7. THE GOVERNMENT OF THE STATES OR PROVINCES

The Executive.—Most of the essential elements in the governments of the provinces or states have already been discussed. In Canada, the heads of the provinces, styled Lieutenant-Governors, are appointed, under ministerial advice by the Governor-General. They hold office for at least five years unless special cause is shown and communicated to the Lieutenant-Governor within a stipulated period. The reasons must also be communicated to the Senate and House of Commons. The Lieutenant-Governors are given executive Councils to help them, but in each province there is

responsible government hence the executive councils in effect are the cabinets. The powers of the Lieutenant-Governors, in their smaller sphere, are therefore those of the Governor-General, or of the Crown. The Lieutenant-Governors, though appointed by the Governor-General have been ruled to be representatives of the Crown. In the Australian states, the head is the Governor, appointed by the Crown, not by the Governor-General. The tenure of appointment is usually five years. The Governor has direct relations with the British government. But in Australia, as in Canada, there is responsible government in each state, and this determines the functions and powers of the Governors. In South Africa, the heads of the provinces, called Administrators, are appointed by the Governor-General-in-Council. The normal term of office is five years, but the same removal conditions apply as in the Canadian provinces. The constitution of South Africa provides that in the appointment of the Administrator of any province, the Governor-General-in-Council shall as far as practicable give preference to persons resident in the province. The Administrator works with an executive committee, elected by the provincial Councils, and is more an agent of the Governor-General than an independent head of a state or province.

The Legislatures—Canada and Australia.—In Canada, with the exception of Quebec, the legislatures are unicameral. In Quebec there are two houses, a Legislative Council, the upper house, and a Legislative Assembly, the lower house. The franchise in all the provinces is of a wide democratic character, approximating to manhood suffrage. Women are eligible to vote on the same conditions as men, except in Quebec, one of the few areas in the British Empire which still refuses the vote to women. In Australia, all the legislatures in the states were bicameral till 1922, when the Queensland upper chamber was abolished. The upper houses are called Legislative Councils, the lower, Legislative Assemblies. The constitution of the upper chamber varies. In Quebec, the members of the Legislative Council, 24 in number, are nominated for life. In New South Wales, in which the minimum number is 21 and the maximum is unlimited, the members are also nominated for life. In the other Australian states, the Legislative Councils are elected, on a restricted franchise, and councillors must be at least 30 years of age. The tenure

is six years, but half of the membership retires every three years in rotation.

South Africa.—In the Union of South Africa, the system is distinct. According to the South African Act there must be a provincial Council in each province consisting of the same number of members as are elected in the province to the Union House of Assembly, with a minimum of 25 members. The members are elected by those qualified to vote for the Assembly elections, and, where practicable, in the same electoral areas. The Councils continue for three years and are not subject to dissolution save by the effluxion of time. The provincial Councils, at their first meeting, must elect from their members, four persons, to form, with the Administrator as chairman, the executive committee of the province. The members of executive committees hold office till their successors are appointed. Casual vacancies are filled by elections save when the Councils are not sitting when the executive committee may co-opt a member. The Administrator and any non-elected member of an executive committee may take part in the proceedings of the Council but cannot vote.

The various constitutions also provide for such things as regular sessions, payment of members, freedom of speech and procedure, and, on the executive side, for the appointment of deputies to the head of the administration, for salaries, and for a civil service.

Territories.—It has already been mentioned that in Canada special arrangements exist for territories not within the normal ambit of constitutional government—the Yukon and the North-West Territories. In Australia similarly there are Territories, the Northern Territory of Australia, which is under an Administrator, and the Territory of the Federal Capital at Canberra, the Australian equivalent of the District of Columbia in the United States, in which Washington is situated. In due course, when the larger Territories are sufficiently developed, they will become provinces or states. The constitutions all admit of the admission of more provinces or states. Most of the Dominions also administer areas outside their own territorial limits. In 1931 the government of Norway recognised the title of Canada to the Sverdup group of Arctic islands, thus completing the jurisdiction of Canada over the whole Arctic sector north of the mainland. The

Commonwealth controls Papua and Norfolk Island, which are British possessions, and, under mandate from the League of Nations, administers the former German territory of New Guinea. The Union of South Africa holds the mandate for South-West Africa, formerly a German dependency. New Zealand also administers outside areas—the Cook Islands, the Ross Dependency in the Antarctic, the Union islands, and, under mandate, Western Samoa, and she shares with the United Kingdom and Australia the mandate for Nauru, a rich phosphate island.

Language.—It has to be added that, arising from racial causes, special provision exists in Canada and South Africa for the recognition of other languages than English. Owing to the strong French element in Quebec, the Canadian constitution provided that either English or French could be used by any person in the debates in the houses of Parliament of Canada and in the legislature of Quebec, and that both the languages should also be used in the records and journals of their houses. The constitution also provides that either of the languages may be used by any person, or in any pleading or process in or issuing from any court of Canada established under the constitution, and in or from any of the courts of Quebec. It is also laid down that the Acts of the Canadian Parliament and of the Quebec legislature shall be published in both languages. In the case of South Africa, the constitution (section 137) provides as follows :—

"Both the English and the Dutch languages shall be official languages of the Union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights and privileges ; all records, journals and proceedings of Parliament shall be kept in both languages, and all Bills, Acts, and notices of general public importance or interest issued by the Government of the Union shall be in both languages."

8. THE JUDICIARY IN THE DOMINIONS

The Judiciary in Canada.—In each Dominion constitution under examination, provision is made for the judicature. In Canada the constitution empowered the Parliament of Canada to provide for the constitution, maintenance and organisation of a General Court of Appeal and for the establishment of any additional courts for the better administration

of the laws of Canada. The provinces were given power to create provincial courts, both civil and criminal, and to regulate civil procedure, but item 27 in the list of the powers of the Dominion, quoted above, shows that the criminal law and criminal procedure were reserved for the centre. The constitution imposed on the centre the duty of fixing and providing the salaries, allowances and pensions of the judges of the superior, district and county courts. The Governor-General was also given the power of appointing these judges, provided that, till the laws were assimilated in the provinces of Nova Scotia, New Brunswick and Ontario, the judges should be appointed from the local bars. In the case of Quebec the judges must be appointed from the Quebec bar without qualification. Special exceptions were provided for the probate courts in Nova Scotia and New Brunswick, as regards both the salary and appointment provisions. The constitution declares that the judges of the superior courts shall hold office during good behaviour, but be removable by the Governor-General, on an address of the Senate and the House of Commons.

The Supreme Court.—Under the provisions of the constitution a Supreme Court was created in 1875 as a Court of Appeal from the courts of the Provinces in respect to such matters as might be brought to appeal under Dominion legislation. Appeals also lie direct from the provincial courts to the Privy Council, either as of right or by special leave. The Supreme Court also pronounces on questions of law referred to it by the government, on the constitutionality of legislation, on the interpretation of the British North America Act, and on other constitutional matters; decisions on such matters, though given in an advisory manner, are liable to appeal. Provision also exists under which the Supreme (and also the Exchequer) Court may hear disputes between the Dominion and a province if the province agrees.

The Exchequer Court.—In addition to the Supreme Court an Exchequer Court was also created for the Dominion. It has admiralty jurisdiction, and possesses exclusive original jurisdiction in cases in which relief is sought against the Crown. It exercises jurisdiction in revenue cases, copyright and in other cases where the action is against the Crown. It can also hear disputes between the Dominion and a province or provinces if the provinces consent.

Provincial Court.—Apart from these courts, federal juris-

diction is exercised in the courts of the provinces, but, as already indicated, the procedure in criminal cases (and also bankruptcy) is regulated by the Dominion. The provinces all have Supreme Courts, with varying organisations and local peculiarities, and the usual minor courts of civil and criminal jurisdiction, small debts courts, juvenile courts. Jurisdiction in divorce cases exists only in those provinces where it existed before the federation, which means all the provinces save Ontario and Quebec.

The Judiciary in Australia—The High Court.—The constitution of Australia differs from that of Canada by making definite provision for the creation of a Federal Supreme Court. The Australian constitution provides that the judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The constitution also decrees that the High Court shall consist of a Chief Justice and as many other judges (but not less than two) as Parliament may prescribe. The judges of the High Court and the other courts created by the Australian Parliament, are appointed by the Governor-General-in-Council ; they cannot be removed except by him on an address from both Houses of Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity. The remuneration of judges is fixed by Parliament, but it cannot be diminished during a judge's tenure of office.

Appellate Jurisdiction of the High Court.—The High Court has jurisdiction, subject to regulations prescribed by Parliament, to hear appeals from the original side of the High Court or from any other federal court or court exercising federal jurisdiction, or from the Supreme Court of any state or any other court of any state from which at the creation of the Commonwealth an appeal lay to the Privy Council. The High Court may also hear appeals from the Inter-state Commission (a body provided for in the constitution to deal with trade and commerce and the admission of new states) on the question of law only, and it is provided that the judgment of the High Court in all such cases shall be final and conclusive. The constitution also enacts that no appeal is permitted to the Privy Council from a decision of the High Court on any question, howsoever arising, as to the limits

inter se of the constitutional powers of the Commonwealth and those of any state or states, or as to the limits *inter se* of the constitutional powers of any two or more states, unless the High Court first certify that the question is one which ought to be determined by the Privy Council. This provision does not interfere with the grant of special leave to appeal under the Royal prerogative.

Original Jurisdiction of the High Court.—Original jurisdiction was conferred on the High Court in respect to certain matters (1) arising under any treaty; (2) affecting consuls or other representatives of other countries; (3) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party; (4) between states, or between residents of different states, or between a state and a resident of another state; and (5) in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth. The Commonwealth legislature was empowered to make laws conferring original jurisdiction on the High Court in any matter (1) arising under the constitution or involving its interpretations; (2) arising under any laws made by Parliament; (3) of Admiralty and maritime jurisdiction; and (4) relating to the same subject matter claimed under the laws of different states. The Commonwealth legislature was also empowered to make laws defining the jurisdiction of any federal court other than the High Court, defining the extent to which the jurisdiction of any federal court should be exclusive of that of state courts, and investing any court of a state with federal jurisdiction, in respect of the various subjects mentioned in this paragraph. The Judiciary Act was passed later to develop the general principles inserted in the constitution.

State Court.—The High Court of Australia now consists of a Chief Justice and five judges. In Australia, there are also other federal courts—the Federal Bankruptcy Court, and the Commonwealth Court of Conciliation and Arbitration, which, set up under special legislation, deals with industrial disputes. In the Australian states the normal judicial organisation is a Supreme Court with both original and appellate jurisdiction, and the usual civil and criminal minor courts, as circumstances require. There is also highly developed conciliation and arbitration machinery in most of the states, with special courts.

The Judiciary in South Africa—The Supreme Court.— The British South Africa Act created a Supreme Court, consisting of a Chief Justice of South Africa, ordinary judges of appeal, and the "other judges of the several divisions of the Supreme Court of South Africa in the provinces." The appellate division of the Supreme Court, according to the constitution, consists of the Chief Justice of South Africa, two ordinary judges of appeal and two additional appeal judges, who have to be assigned to the appellate division from one of the provincial or local divisions of the Supreme Court, and who sit as judges in their ordinary areas when not required as appeal judges. The provincial divisions of the Supreme Court consist of the Supreme Courts of the Cape Province, Natal and the Transvaal and the High Court of the Orange River Colony. Each of these courts is presided over by a judge-president. Local divisions of the Supreme Court are the courts of the Eastern Districts of the Cape, the High Court of Griqualand, the High Court of the Witwatersrand and the circuit courts of the four provinces. These provincial courts and local courts retain their jurisdiction at the time of union, and are given further original jurisdiction in all cases in which the Union is a party in which the validity of a provincial ordinance is in question. They are also given jurisdiction in election petitions, both of the Union and the provinces. As regards appeals, the procedure is of a twofold character. Where, before the Union, appeals lay to the Supreme Court of a colony, the constitution provides for an appeal to the appellate division only, save in certain specified cases, where appeals lie to the provincial division of the Supreme Court, further appeal—to the appellate division—being allowed by permission of the appellate division. Appeals are also heard from outside areas, from the High Court of Southern Rhodesia, from the Swaziland Court and from the High Court of South-West Africa. Appeals which before the Union lay to the Privy Council now go to the appellate division. No appeal lies to the King-in-Council from the Supreme Court, except by special leave, and the Union Parliament is empowered to limit the matters in respect of which special leave may be asked. Such bills have to be reserved for the signification of His Majesty's pleasure.

The South African Act contains various other provisions regarding rules and procedure, the quorum for hearing appeals,

the jurisdiction of the Appellate Division, execution of processes and the rules governing the admission of advocates and attorneys. It also decrees that the appellate division shall sit at Bloemfontein, but that it may for the convenience of suitors hold sittings at other places. The provisions regarding the tenure of judges are substantially the same as those which prevail in Australia.

The Judiciary in the Provinces.—In the provinces, the provincial divisions of the Supreme Court are the chief courts. There are also magistrates' courts in the districts into which the provinces are divided. These magistrates' courts have a prescribed civil and criminal jurisdiction, and appeal lies to the provincial and local divisions of the Supreme Court, or, in special cases to the appellate division.

In Natal.—In Natal there is the Native High Court of Natal, composed of a judge-president and three judges. The function of this court is to try serious offences committed by natives, including capital offences. Its jurisdiction is exclusive of any other court. Appeal lies to the appellate division, or, on a point of law, to the Natal provincial division of the Supreme Court.

System of Law.—The Common law prevalent in South Africa is the Roman Dutch, not the English law. English law however is followed in mercantile matters.

CHAPTER XXIII

THE GOVERNMENT OF INDIA

1. HISTORICAL

General Remarks.—The present system of government in India is regulated by the Government of India Act, 1935. Historically, the first point of contact between England and India was commercial. Englishmen came to India first as trading adventurers, with or without charters from the governments of their time. They had no territorial dominion. With the extension of their enterprises came struggles with some of the Indian governments, under which they conducted

their commercial activities. The Dutch and French had also come to India in search of trade, and they clashed with the English. Gradually, through war and political action the whole of India came under English control, with the exception of some areas first known as Native and later as Indian States, with which special treaty arrangements were made. Once centralised government, and a uniform system of administration were established, a reverse process set in. The English principle of rule by the co-operation and association with the people on the spot began to permeate the relation of the two countries. Experiment after experiment was tried and in 1917 formal acknowledgment was given to the principle of responsible government. This principle, with federation, is incorporated in the present Indian constitution.

Early Connection of England with India.—The connection of the English with India dates back to the time of Elizabeth. Fired by stories of wealth brought to the West through Venice by eastern traders, and from Portugal by Portuguese mariners, in 1600 a number of Englishmen of good birth petitioned Queen Elizabeth to grant them a charter of incorporation as a company to trade with the East Indies. The task undertaken by these merchant adventurers was no light one. The east was practically unknown to the English people of that time; the sea routes were only partially known and what was known of them was due largely to Portuguese sailors. Ships were slow and small, and their utility for trading in the east was problematical. But those were the days of Drake, Hawkins and Raleigh. The venturesome merchants pressed their claims hard before the government of Queen Elizabeth, and on the last day of the sixteenth century, Queen Elizabeth granted the first charter to an English company for the purpose of trading in the East.

The First Charter.—This charter was similar to the charters granted to other companies of that time. The Company, it declared, was to elect each year one governor and twenty-four committees. These committees were individuals, not bodies. They were the forerunners of the Company Directors. The charter also granted a considerable number of privileges provided that the trade proved profitable to England. Should it prove unprofitable, the charter could be terminated on two years' notice. The Company was given practically a monopoly of trade with the East Indies. It had power to grant

licences to other traders and to forfeit the property of unlicensed traders, or (as afterwards called) interlopers. It received power to lay down laws for the good government of the Company, provided those laws were not contrary to the greater laws of England. It was also empowered to impose penalties to secure obedience to the laws.

In the early days of the Elizabethan company trade was carried on by individual members subscribing to the expense of each voyage. The profits were divided out proportionately at the end of the voyage. Some years later, instead of each member contributing to each separate voyage, the contributions were lumped together and the Company was managed on a joint-stock basis.

Further Charters.—During practically the whole of the seventeenth century the relations of England and India were purely commercial. In 1609 James I. renewed the charter of Elizabeth, with such additions or alterations as the Company found necessary for the enforcement of discipline on long voyages. During the reign of Charles I. and during the Commonwealth, the Company was engaged in competition with Dutch merchants and English interlopers. In 1657 it was in such great distress because of competition that it actually contemplated giving up its factories. Cromwell, however, granted a new charter to the Company, which was renewed at the Restoration by Charles II. in 1661.

Charles II.'s Dowry: The Growth of the Company.—Charles II. was the direct cause of the first territorial sovereignty of the English in India. In 1661, the year after his accession to the throne, the port and island of Bombay were granted to him as part of his dowry on his marriage with the Infanta of Portugal. A marriage dowry of this type was of little use to the English king. He had no direct method either of governing or of utilising his property. The most reasonable course was to lease it to the Company which had established trading connections with India. Thus, in 1669, his dowry was handed over to the Company in return for an annual rental of ten pounds. The company by this time had established many trading centres in various parts of India, particularly on the west coast. Gradually its activities extended to Madras and to Bengal. Trading posts, or, as they were called, factories, comprised a few acres of land, the rights to which were given by the ruling authorities in

India. As the commercial posts increased, the Company found it necessary to organise the stations on a definite scheme. At Bombay, Madras and Calcutta, principal stations were established, to which the others in the various areas of India were made definitely subordinate. From these three trading head stations arose ultimately the three presidencies of Bombay, Madras and Bengal.

Charters for Money-coining and Courts.—Charles II. also granted to the Company by royal charter the right of coining money. The money was to be current in India, but not in England. In 1683 a charter was granted for the creation of courts of judicature at such places as the Company might decide. These courts were to consist of a lawyer and two merchants nominated by the Company. Their law was to be according to the rules of equity and good conscience. The development of Indian and European law side by side from this time onwards we have already seen.

Charter for Municipal Government and Beginning of Parliamentary Intervention.—In 1687 King James II. granted a charter to the East India Company for the creation of municipal government at Madras. The charter provided for the creation of a municipality with a mayor, twelve aldermen and sixty or more burgesses. At this time the officials of the Company began to realise that, if they were to compete successfully with the Dutch, they would have to take more upon themselves than mere commercial organisation. Not only was the Company persecuted by English interloper merchants and Dutch competitors, but they had considerable difficulties with the Mahratta and Moghul powers. Their first intention was to establish territorial supremacy only where their factories had been established, and just so far as it was necessary to give their commercial undertakings a sound political basis. The struggle with English interlopers led to what was really the beginning of parliamentary intervention in Indian affairs. In 1691 the interlopers formed a new East India Company and attempted to upset the monopoly of the original one. In spite of a decision of the Lord Chief Justice in favour of the old East India Company, the House of Commons, in 1694, declared that, unless prohibited by definite Act of Parliament, all English subjects had a right to trade with the East Indies. This decision arose out of a legal case. At the instance of the old Company a ship had been detained in the Thames

on the suspicion that it was to trade with the East Indies. The monopoly of the old Company had been renewed on the decision of the Lord Chief Justice, but the detention of ships brought the matter before Parliament, which laid down a maxim that only the legislature could give a trading monopoly to any part of the world.

The New Company and Amalgamation.—In 1698 Parliament again occupied itself with Indian affairs. The rights of the old East India Company were due to expire in the course of three years, and Parliament passed an Act which constituted a new association for the conduct of East Indian trade. This association or 'General Society' was incorporated as a joint-stock company called "The English Company Trading to the East Indies." The other company was known as the Old or London Company. The Old Company subscribed a large sum of money to the funds of the new joint-stock society. At the end of the seventeenth century there were several types of merchants who had a statutory right to trade with the East Indies: (1) the new company incorporated in 1698, (2) the original old Company, (3) a small number of subscribers to the General Society who had not subscribed to the new joint-stock company which arose out of the General Society, and (4) a number of interlopers. In 1702 the two companies, the old and the new, entered into negotiations for union. These negotiations were carried through in 1708 by an Act of Parliament. The new company was called "The United Company of the Merchants of England Trading to the East Indies." The London Company's charter expired finally in 1709.

Creation of Courts.–Once the Company was definitely established, it proceeded to organise itself on an efficient basis. One of the first needs was the creation of suitable courts for both civil and criminal cases. The Company presented a petition to King George I. for the establishment of mayors' courts at Madras, Bombay and Calcutta, or Fort William; in 1726 courts were established. Each court was presided over by the mayor and nine aldermen, seven of whom had to be British subjects. Appeal lay from these courts in some cases to the Governor-in-Council and in others to the British Government. Later, in 1753, a Court of Requests was established for the trial of petty cases. The 1753 Charter also limited the jurisdiction of these courts to suits between

persons who were not natives of the towns over which the courts had jurisdiction. Suits arising between Indians, the charter declared, were to be decided by the Indians themselves.

Extension of the Company's Territories.—During the eighteenth century the territorial power of the Company extended rapidly. Factories multiplied and were strengthened. In addition to ordinary commercial undertakings the Company was compelled more and more to become both a civil and a military power. The break-up of the Moghul power after the death of Aurangzeb created so much unrest in India that the Company was not sure of protection in any one of its stations. The distance of Delhi, the Moghul capital, from the factories, and the difficulties of communication compelled them to adopt such means as would guarantee immunity from wanton attacks and from the rapacious levies of the lieutenant-governors of the Moghul Empire. In addition, the gradual dissolution of Akbar's scheme of administration and the weakness of the powers at Delhi encouraged the French. Seeing an opportunity of conquest the French established possessions in various parts of India, particularly in Madras. In Madras started a series of struggles between the French and English which ultimately led to the beginning of English territorial supremacy in India. In Bengal this struggle was many-sided : sometimes it was with the Dutch, sometimes it was with the French and sometimes it was with the local powers. After the subjugation of Serajudulla by Clive at the battle of Plassey, 1757, the *de facto* sovereignty of the English was established in Bengal. Theoretically the actual powers of government were exercised by the Nawab of Murshidabad in the name of the Moghul Emperor. Clive decided to establish more than a *de facto* power. He obtained the grant of the *dewani* from the Emperor. In the *firman* granting the *dewani,* the Emperor, Shah Alam, placed the whole of the revenue administration in the hands of the Company. Revenue administration implies the administration of civil justice. The Company thus combined the possession of military force with the administration of civil justice, a fact which still further strengthened its actual and legal position.

Interference of Parliament.—For many years the English Government did not interfere. With the growth of the Company's prosperity and the extension of its dominion the authorities in England gradually became alive to the fact

that India was the scene of unusual events as well as a field of infinite prosperity. The wealth and overbearing attitude of the East India Company's merchants created considerable envy in the hearts of their stay-at-home countrymen, who began to search about for evidence to discredit the administration which had given them their wealth. From this envy, or, rather, from the interest caused by the envy of a few Englishmen, arose a large series of legislative enactments and celebrated cases, such as that of Warren Hastings, the sum total of which was later to bring about the sovereignty not of the Company but of the British Parliament itself.

The Regulating Act of 1773.—The first real legislative Act governing the East India Company was the Act "for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe." This Act, which is better known as Lord North's Regulating Act of 1773, contained a fairly complete scheme of government for the Company's territories in India. It laid down that the Government of Bengal should be composed of a Governor-General-in-Council. The Council was to consist of four members. In the case of differences of opinion the majority was to decide. If there was an equal division of votes the Governor-General, or, in his absence, the presiding member of council, was to have a casting vote. Madras and Bombay were to have separate Governors or Presidents, and Councils, which were to be subordinate to the Governor-General and Council in Bengal as regards the declaration of war and the conclusion of peace. This Act nominated the first Governor-General in India, Warren Hastings, and his four Councillors, General Clavering, George Monson, Richard Barwell and Philip Francis. The appointment of subsequent governors and councils was left to the Court of Directors of the Company. The home management of the Company's affairs also remained in the hands of the Directors.

The Regulating Act also empowered the Governor-General and his Council to issue such rules and ordinances as were necessary for self-government at Fort William and other factories, and to levy such punishment as was necessary to enforce obedience to the rules and orders issued. The Act laid down the unusual provision that none of the legislative regulations of the Council was to be valid unless it were registered by the Supreme Court with the consent and

approbation of the Court. An appeal lay from the regulation registered by the Court to the King-in-Council.

The Act also constituted the Supreme Court, which was not only to be independent of the executive government, but was to act as a check upon its actions. While the executive government consisted of the Company's servants, the Supreme Court was to consist of a Chief Justice and three judges appointed by the King. It was to have jurisdiction over the King's subjects in the province of Bengal. The Court was a King's court, not a Company's court. Rules were laid down regarding appeals to the Privy Council and the power of the Government of Bengal to alter any of the provisions of the Act.

The Regulating Act is a most unfortunate example of parliamentary interference in Indian affairs. It set up a two-fold authority, the executive government and the Supreme Court, the former responsible to the Company, the latter to the Crown. This double authority soon proved unworkable. The Governor-General was also practically powerless before his own Council. The wording of the Regulating Act, moreover, was not sufficiently clear to mark off the affairs of the one authority from those of the other. The Supreme Court completely dominated the executive government. Not only did it hamper its work by the issue of its writs but it exercised a considerable jurisdiction independent of the executive government. In 1781 an Amending Act was passed, which removed the worst of the anomalies of the Regulating Act. It exempted the Governor-General and his Council jointly and individually from the jurisdiction of the Supreme Court in regard to their public work. The Governor-General and his Council were also empowered to draw up regulations for the creation of the local courts of justice without reference to the Supreme Court.

The India Act, 1784.—The Amending Act of 1781 was followed by Pitt's India Act of 1784. The frequency of Indian legislation in the House of Commons was an index of the growing power of the Company. Committees had been appointed from time to time to report on the administration, and on their reports motions were made in Parliament for the recall of Warren Hastings and for a closer limitation of the Governor-General's power. The Directors of the Company refused to recall Hastings. In 1783, the Prime Minis-

ter, Fox, introduced a bill into the House of Commons to transfer the authority from the Court of Directors to a new body to be appointed by the Crown. This bill was passed in the House of Commons but was defeated in the House of Lords. Fox resigned, and was succeeded by Pitt. In the new Parliament of 1784, Pitt introduced and carried through his own India Act. This Act set up as the supreme authority six parliamentary "commissioners for the affairs of India," a body which became known as the Board of Control. The Act also made changes in the Council in India. It reduced the number of members in Bengal to three, of which the Commander-in-Chief had to be one. It also remodelled the constitution of the Councils of Madras and Bombay. The Parliamentary Commissioners, or the Board of Control, were to consist of five members of the Privy Council, three of whom should be the Chancellor of the Exchequer and the two Secretaries of State. The President of the Board was given a casting vote in all matters of dispute; in fact the idea behind the Act of 1784 was to give as complete power as possible to the President of the Board of Control. The first President of the Board was Lord Melville (Henry Dundas), who held office from 1784 to 1801. Pitt's Act thus started a system of government by two authorities, viz., the Company and the Board of Control. This lasted till the complete reform of the government took place after the Mutiny. From the time of Lord Cornwallis all administrative acts of the Governor-General-in-Council were subject to the sanction of the British Government. The Directors continued to exercise powers of patronage; they also conducted the home business of the Company, but Parliament more and more scrutinised their administration. Periodical enquiries were held, the most famous of which produced the Fifth Report of 1812.

Renewal of the Charters.—The charters of the Company were renewed from time to time, but with each renewal the control of Parliament was more strict. In 1793 the Court of Directors was required to appoint a secret committee of three of their own members through whom the Board of Control was to issue its decisions to the Governors in India in times of war and peace. The Councils were also remodelled on a basis of three members each and the Commander-in-Chief. The Court of Directors was still given the power of

appointment of the Governors and the Commander-in-Chief, with the approval of the Crown. The Court had also the power of removal. The Governor-General was given power to over-ride his Council in matters of great importance. Similar powers were given to the Governors of Madras and of Bombay. The Act continued the Company's monopoly for twenty years. Other Acts followed regulating the organisation of the government and granting new legislative powers to the Madras and Bombay Councils. Supreme Courts were created for Madras (in 1800) and Bombay (1823).

The Charter Act of 1833.—In 1813 Parliament confirmed the Company in the tenure of its Indian territories, but abolished its monopoly of Indian trade. It confirmed its monopoly of trade with China. This Act authorised the expenditure of a considerable sum of money for education. In 1833 the Charter Act declared that all the territories of the Company in India were held in trust for the Crown, and abolished the monopoly of trade which the Company had held with China ; it ended the career of the Company as a mercantile corporation. No official communication was to be sent by the Directors to India until it had been examined and approved by the Board of Control. The Governor-General of Bengal was now called Governor-General of India. Another, a fourth or extraordinary member, was added to his Council but he was to attend and vote only at meetings for the making of laws and regulations. Like the others he was to be appointed by the Directors on the approval of the Crown but from outside the servants of the Company. This was the so-called legal member. The first legal member was Macaulay. The Governor-General-in-Council was empowered to make laws, or, as they were called in the Act, "laws and regulations" for the whole of India. The power of legislation was withdrawn at the same time from the Governors of Madras and Bombay, although they were allowed to place draft schemes before the Governor-General-in-Council. Acts passed by the Governor-General-in-Council could be disallowed by the Directors. Such Acts had also to be laid before Parliament. An important result of the 1833 Act was the appointment of the Law Commission, composed of the legal member of the Governor-General's Council, another member from England and one servant of the Company from each of the three Presidencies. This Commission

drafted the Penal Code which, however, did not become law till 1860. The Act created a new Presidency, the centre of which was to be at Agra. This provision was modified two years later by the creation and appointment of a Lieutenant-Governor for the North-Western Province. The Act also empowered the Governor-General to appoint a Deputy Governor for Bengal, and, like the Charter Act of 1813, it contained certain ecclesiastical provisions regarding the creation of bishoprics. It also declared that "No native of India shall, by reason of his religion, place of birth, descent or colour, be disabled from holding any office under the Company."

The Charter Act of 1853.—At the next Charter stage, in 1853, the right of patronage was taken from the Directors and placed under the Board of Control. The President of the Board of Control thus practically completely supplanted the Directors as the ruling power. The Act of 1853 is particularly memorable as having established what was really the first Indian Legislative Council. The Council of the Governor-General was again expanded and reconstituted. The legal member was now to be regarded as an ordinary member for both legislative and executive action. Six special members were added for the purpose of legislation alone. These members were nominated from the presidencies and lieutenant-governorships. The Council thus consisted of twelve members : the Governor-General and the four members of his Council, the Commander-in-Chief and six special members. The Act also empowered the Governor-General to appoint two additional civil members, but this power was never used. The Council's sittings were made public and official proceedings were regularly published.

The Act of 1853 made several other alterations in the constitution and control of India. The Governor-General was no longer to be Governor of Bengal. A new Governor of Bengal was to be appointed similar in position to the Governors of Madras and Bombay. Power was given to the Board of Control to appoint a Lieutenant-Governor until a Governor was appointed. Peculiarly enough the power to appoint a Lieutenant-Governor was exercised till 1912, when the first Governor was appointed. The Act also said that six members of the Court of Directors should be appointed by the Crown. It declared the Commander-in-Chief of the

Queen's Army to be the Commander-in-Chief of the forces of the Company.

The Act of 1853 was largely the work of Lord Dalhousie. To him, therefore, belongs the credit of the first attempt to differentiate the legislative and the executive functions of the Government of India. The Governor-General's Council was the only Council which could legislate for India as a whole. The principle of local representation was admitted by the appointment of four official representatives of the governments of Madras, Bombay, Bengal and Northern India. The actual position of the Government of India in the Council was that, if one member were absent, there was a majority against the officials of the Government of India. Another innovation was the oral discussion of questions in full Council. The business of the Council henceforth was public. Thus was laid the basis of the future Legislative Councils of India, for it was now recognised that legislation in India required special machinery.

The Government of India Act 1854.—In 1854 the Government of India Act was passed, which enabled the Governor-General of India in Council, with the sanction of the Directors and the Board of Control, to take under his immediate authority and management by proclamation all the territories of that time belonging to the East India Company and to make provision for their administration. Under this Act the various Chief Commissionerships were established. The Act enjoined the Government of India to lay down the limits of the several provinces, and it also officially declared that the Governor-General of India was no longer to be known as the Governor of the Presidency of Bengal.

The India Act of 1858.—The next important constitutional document in the history of India was the "Act for the better Government of India" passed in 1858. The Indian Mutiny led to the complete reorganisation of the government. The East India Company came to an end and the powers previously held by the Directors and the Board of Control passed to the Secretary of State for India. With him was associated a council, known as the Council of the Secretary of State. The members of this council were originally fifteen in number. According to the regulations in force before the Act of 1919, it consisted of such number of members, not less than ten and not more than fourteen, as the Secretary

of State from time to time might determine. Nine at least of the members must have had long and recent service or residence in India. Ten years were laid down as a minimum of service and no member could be appointed who had left India more than five years previous to his appointment. Originally the conditions of appointment were similar to those of a judge of the High Court, viz., good behaviour, but the term was later reduced to ten years' maximum, and still later to seven. The Secretary of State had power to fill vacancies. No member of the Council could sit in Parliament. The Secretary of State, as President of the Council, could divide the Council into committees and could appoint one of the members vice-president. As the Secretary of State is a member of the Cabinet of Great Britain and thus responsible to Parliament, he could not be bound by the decision of the Council ; but in over-riding its decision he had to state his reasons in writing. In cases of urgency he could act without consulting the Council and in certain matters he was authorised to act alone. The whole of the revenues of India were placed under him, but he could not sanction any grant without the concurrence of the majority of the Council. In this matter Parliament completely gave up its control to the Secretary of State and his Council, but it safeguarded the revenues of India against arbitrary disposal by insisting on a majority vote in the Council. Even if it wished, Parliament could not order any expenditure to be incurred from Indian revenues without first amending the Act of 1858. The accounts of the Secretary of State were to be audited in England and placed before Parliament. Except in the case of invasion, no revenues could be applied for military purposes without the consent of both Houses of Parliament. The Act also declared that all naval and military forces hitherto belonging to the Company were thenceforth to belong to the Crown. The servants of the Company were now to become government servants and future appointments would be made by the Crown. The Governor-General, Governors, Advocates-General, and Members of Council in India were to be appointed by the Crown ; other appointments to high offices, Lieutenant-Governorships, Chief Commissionerships, etc., were to be made by the Governor-General, subject to the approval of the Crown.

The Act of 1858 was accompanied by the well-known

Queen's Proclamation, which has been called the Magna Charta of India.

The Indian Councils Act, 1861.—In 1861 was passed the Indian Councils Act, many of the provisions of which formed the basis of the internal government of India till 1920. The Council established by the Act of 1853 had not proved satisfactory. For one thing it abolished the legislative powers of the presidencies. It centralised legislation for India in the hands of one Council with local representatives. It soon became apparent that local legislatures would have to be created in Madras, Bombay and Northern India. Again, the opinion that the Councils could not fulfil their proper functions without some direct representation of the Indians themselves was finding favour. Certain local difficulties had arisen in connection with the jurisdiction of the Council. The Council, too, had tended to depart from its original intention ; it began to assume the characteristics of Parliament. Instead of being purely legislative it took up its attention with enquiries into grievances. The Act of 1861 was passed in order to remedy these defects. The power of legislation was restored to Madras and Bombay. A Legislative Council was also established for Bengal, and the Act empowered the Governor-General to establish councils for the North-West Provinces and the Punjab. These two bodies came into being in 1886 and 1897 respectively. The Governor-General's Legislative Council was increased by additional members, not less than six and not more than twelve, nominated for two years by the Governor-General himself. At least half of these members were to be non-official and actually some of them were always Indian. The legislative power of the Governor-General-in-Council was increased by the Act.* It was to cover all persons whether British or Indian, foreigners or others, all courts of justice, all places and things within Indian territories and all British subjects within the dominions of the Indian princes and the states in alliance with the British Crown. Certain subjects were reserved for the sanction of Parliament—such as the statutes governing the constitution of the Government of India, statutes affecting the raising of money in England, any future statutes affecting India, the Mutiny Act, and the unwritten laws and constitution of England. The Act gave the force of law to the miscellaneous rules and orders which had been issued in the

non-regulation provinces (i.e., the newly acquired territories of the Company), either by extending them or adapting to them regulations which had been made for the older provinces, or by issuing them directly from the executive authority of the Governor-General-in-Council. The Governor-General in case of emergency was empowered to make temporary ordinances without the consent of the Council, but these ordinances could not remain in force for more than six months.

The local legislatures established by the Act for Madras and Bombay were each to consist of the Advocate-General with a number of other persons varying in number from four to eight, of whom half were to be non-officials nominated by the Governors. Local legislatures were forbidden to legislate in matters forbidden to the Governor-General-in-Council and also in matters affecting general taxation, currency, post offices, telegraphs, penal codes, patents and copyright. The Governor-General's sanction was necessary before certain measures could be introduced in the local Councils; for all measures his final assent was necessary. He thus directly controlled the legislation of the local Councils.

As yet there was no real attempt to separate central and local subjects for purposes of legislation. The Governor-General-in-Council could legislate for the whole of India and he retained considerable powers in respect of local legislation. The new Councils were purely legislative. They could not, like the Councils of the 1853 Act, enquire into or redress grievances ; that was left to the executive government.

The Indian High Courts Act, 1861.—In 1861 one of the most important Acts in the history of the development of Indian administration of justice was passed—the Indian High Courts Act, according to which the Crown was empowered to establish by letters patent High Courts at Calcutta, Madras and Bombay. The Supreme Courts, the Sadar Dewani Adalat and the Sadar Nizamat Adalat were merged in the new High Court. Each of the High Courts was to be composed of a Chief Justice and judges not exceeding fifteen in number ; of these not less than one-third were to be members of the Indian Civil Service. All the judges were to be appointed by, and to hold office during the pleasure of, the Crown. The High Courts were given superintendence of all courts from which appeals might come to them.

Other Acts.—The next important stage in the develop-

ment of the Indian institutions of government was the Indian Councils Act of 1892. In the interval between 1861 and 1892 only acts of minor import were passed. By the Government of India Act of 1865 the legislative power of the Governor-General-in-Council was extended to British subjects in Native, or as they are now known, Indian States. The same Act enabled the Governor-General-in-Council by proclamation to define and alter the territorial limits of the presidencies and other administrative units in India. In 1869, by the Indian Councils Act, the Governor-General-in-Council was empowered to make laws for native Indian subjects of the Crown in any part of the world. In 1874, another Indian Councils Act made provision for the appointment of a sixth member (for public works) to the Governor-General's Council ; but by the Indian Councils Act of 1904 the sixth member's place was made general, not necessarily for public works purposes. In 1876, by the Royal Titles Act, the Queen adopted the title of Empress of India in addition to her other titles. The official Indian equivalent adopted was *Kaiser-i-Hind*.

The Indian Councils Act, 1892.—The Indian Councils Act of 1892 marks a distinct advance on that of 1861 ; it increased the size of the Legislative Councils and also changed the method of nomination. The members to be nominated for the Council were fixed at ten to sixteen for the Governor-General's Council, from eight to twenty for the Councils of Madras and Bombay, not more than twenty for Bengal, and not more than fifteen for the United Provinces. The Governor-General-in-Council with the approval of the Secretary of State in Council was enabled to make regulations to govern the nomination of members of his own and the provincial councils. Under the regulations introduced, the principle of election was, in effect, initiated for the Legislative Councils. Thus, ten non-officials were included in the Governor-General's Council. Of these one each was nominated by the Bengal Chamber of Commerce, and the Legislative Councils of Madras, Bombay, Bengal and the United Provinces. In the provincial Councils the non-officials were nominated on the recommendation of various bodies and interests, such as corporations, universities, district boards, landlords, chambers of commerce and trades associations.

This "nomination" was really election, though the name election was not officially used. No nomination was rejected.

The Act of 1892 made considerable advance in the conduct of business in the Councils. The most important departure was the privilege of official criticism granted both to the supreme and the provincial Council. By the Act of 1861 discussion on financial matters was limited to those occasions on which the Finance Member introduced new taxes. Now the whole Council was given the right freely to criticise the financial policy of the Government, with the reservation that they could not question the budget item by item as is done in the House of Commons, where each item is passed separately. The concession of financial criticism was important not only to the non-official members but to the Government. The records of the Councils show much painstaking criticism by non-official members both Indian and European. Many of the leading business men of India were nominated under the Act, and, in particular, the Finance Member derived considerable benefit from their presence, both officially, by public discussion in the Council, and privately, by personal discussion.

The Act also granted the right to ask questions. This right was really given in the interest of the Government, because by means of answering questions they were able to explain their policy or individual actions. The Council was also empowered to draw up rules for questions and discussion.

Five years after the Act was passed, the Secretary of State ordered the working of the new system to be reviewed, particularly to find out how far the various classes in India were represented on the legislative bodies. In Madras and Bombay it was shown that district boards and municipalities, which nominate members for rural areas, were disposed to elect lawyers as their members. No change was made in these provinces, but in Bengal a seat was transferred from the rural municipalities to the landlords or zemindars, who as a class hitherto were unrepresented. The numbers and proportions of non-official members were still small. In the provincial Councils only eight non-official members were admitted. In the Indian Legislative Council, a maximum of sixteen additional members was allowed, but to keep an official majority, not more than ten could be non-officials.

Of these, four were "recommended" by the non-official

members of the provincial Legislative Councils and one by the Bengal Chamber of Commerce. As it was impossible to represent the whole of India by the remaining seats on a basis of election, the Governor-General nominated the other five members himself.

The Morley-Minto Reforms.—The next important event in the constitutional development in India is the Morley-Minto Reforms of 1909. These reforms mark a great advance in the legislative powers of the Councils. Many reasons contributed to bring about this. In the first place, the spread of education amongst the people of India had raised a class which demanded an outlet for its political feelings. In the second place, a number of events, internal and external—the Universities Act of 1904, the partition of Bengal, and the Russo-Japanese war—had stirred the political feelings of the people of India. In the third place, experience of council government had been favourable. The government had derived definite benefit from the non-official members. The non-official members on their part continued to press for an extension on the principle of the Councils Act of 1892.

A committee was appointed to consider the advisability and methods of increasing the representative element in the various councils. The problem which the committee had to face was the conjunction in some sort of constitutional machinery of the principle of official executive control with the principle of constitutional parliamentary government. After discussions extending from 1906 to 1909 the reforms of 1909, known as the Morley-Minto Reforms, were introduced—Lord Morley was Secretary of State and Lord Minto Viceroy at the time. In the meantime two Indians had been nominated as members of the Secretary of State's Council, and at the time of the introduction of his Bill into Parliament Lord Morley announced his intention of appointing an Indian member to the Viceroy's Council. Mr. S. P. Sinha (afterwards Lord Sinha) was appointed as law member of the Governor-General's Council in March, 1909. Later an Indian was appointed to the executive council in each provincial government.

Increases in Legislatures.—The Indian Councils Act was passed in 1909, and became operative in 1910. The Morley-Minto system had a short life; although it lasted till the Montagu-Chelmsford constitution became operative, it was never seriously tested, because, with the outbreak of the Great

War in 1914, the legislatures in all the countries concerned receded in national importance in favour of the executives. The Morley-Minto system nevertheless represented a distinct constitutional advance. The membership of the legislatures were greatly increased. The previous maximum which was 126 was raised to 370. Whereas there used to be 39 elected members, now there were 135. Moreover, election was definitely established, as compared with "recommendation." Election however was still indirect, except in the case of special interests, such as chambers of commerce and universities. The provincial legislatures (for the Governor-General's Council), district boards, municipalities and special Muslim electorates were the chief agencies for the election of members representing the community as a whole, as distinct from special interests. Nomination was retained to secure representation for minority communities and interests not otherwise represented. The most important advance in the Morley-Minto system was the replacement of official by non-official majorities in the provincial legislatures. An official majority was retained at the centre. Another important departure was the extension of the scope of the Council's work. All subjects of public interest could now be discussed. Supplementary questions were permitted. Free discussion was now possible on almost every question of administration. Resolutions, incorporating suggestions, advice or new policy, could also be moved.

Subsequent Development.—Although the Morley-Minto Reforms represented a big advance in the constitutional development of India, their utility was short-lived. Many circumstances combined to make them merely a stepping stone to parliamentary government. Both Lord Morley and Lord Minto had insisted that they were not meant to lead to parliamentary government in India. Their aim in instituting the enlarged Councils was to improve the existing machinery of government. The admission of Indians into the Councils had proved so successful that an extension of the principle was both desirable and necessary. But the authors of the reforms thought that the nature of the Indian social structure was opposed to responsible government. They did not foresee the intense interest with which Indians actually entered into the spirit of the new type of government; nor did they consider that what they called the "natural aspirations" of the people

would require a more substantial outlet than the new system allowed. The negative statement of the authors of the reforms simply whetted the Indian appetite for some type of real parliamentary government.

The new Councils achieved their purpose from the point of view not only of government, but of the educated classes in India. According to Lord Morley, the purpose of the Councils was "to enlist fresh support in common opinion on the one hand, and on the other to bring government into closer touch with that opinion, and all the currents of need and feeling pervading it, to give new confidence and a wider range to knowledge, ideas and sympathies to the holders of executive power." The Government derived much benefit from its association with Indian representatives, while the Councils stimulated the political life of India. In this way they really compassed their own destruction, for once the Indians were sufficiently prepared the only course open was for expansion, and the only avenue of expansion was towards responsible government.

Circumstances Favouring Responsible Government.—Several circumstances helped to prepare the way for responsible government. The very rapid advance of education, particularly in its higher branches, created a body of Indian opinion with definite political leanings and ideals. The advance of education had been one of the arguments for the Morley-Minto reforms. Not only did education advance more rapidly after these reforms, but the part played by educated Indians in administration greatly increased. Indians occupied most of the posts in the various provincial and subordinate services of government, and a considerable number entered the Imperial services. Education meant the development of individuality on the part of Indians, and this individuality called for expression. Not only did the constitutional restrictions of the system of government require alteration, but so also did the terms of the government services. A large number of chafing racial discriminations annoyed Indian opinion and made the demand for representative government more insistent than it otherwise might have been. Thousands of Indians too, for educational or other purposes, had visited Great Britain, America or Japan, and had studied the political and social organisations of these countries.

The political consciousness of India was manifested in

several ways. Large numbers of societies or associations sprang up to further social and political reform. Recognising the difficulties of representative government in a land with such a mixed population, and with such distinctive anti-national institutions as caste and opposed religions, many Indians set themselves the task of social reform and of laying the basis of common political institutions for India as a whole. The existence of the two chief religious systems, Hinduism and Muhammadanism, had always presented difficulty in the unification of India, and Indians themselves, recognising this, hastened to create a basis of common understanding which might remove the barriers in the way of Indian unity.

The Indian National Congress.—One political institution in particular deserves notice—the Indian National Congress. The Indian National Congress was founded in 1885, by the late Mr. A. O. Hume, a retired member of the Indian Civil Service, and has had regular sessions ever since. Its original objects are set forth in the following statement which every member of the Congress had to accept : "The objects of the Indian National Congress are the attainment by the people of India of a system of government similar to that enjoyed by the self-governing members of the British Empire, and a participation by them in the rights and responsibilities of the Empire on equal terms with those members. These objects are to be achieved by constitutional means by bringing about a steady reform of the existing system of administration, and by promoting national unity, fostering public spirit, and developing and organising the intellectual, moral, economic and industrial resources of the country."

In its early years, the Indian National Congress was content to pass resolutions on questions of public importance such as the Indianisation of the services and the separation of executive and judicial functions. Constitutional issues of a major character were left alone, but in course of time, the members divided themselves into parties. In 1907 there was a split, at the annual meeting at Surat ; one party, the extremists, refused to act with the other, the moderates. In 1916 the Congress was re-united, but in 1918 it again broke up on the subject of the Montagu-Chelmsford Reforms. The extremists proposed to reject the proposals altogether ; the moderates supported qualified acceptance of them. The result was that the moderates abstained from the National

Congress and formed a conference of their own. In December, 1920, the Congress, at Nagpur, altered the fundamental article of its constitution, the "British connection" being omitted. The moderates founded a new all-India institution —the National Liberal Federation. After 1920, the Congress became a sort of permanent opposition party. From its initiation, Congress had a regular constitution, and attracted support from leading Indians. Gradually its influence permeated the whole of India. The All-India Committee, which was the central directing authority, was recruited on a federal plan. Provincial committees were created in all provinces, and they in their turn were selected by district committees. Membership was open to all who accepted the Congress "creed." Regular meetings were held both of the all-India and provincial organisations, and as the membership grew, the Congress became sufficiently powerful to paralyse the working of the Montagu-Chelmsford reforms in some provinces. Either it abstained from taking part in the elections, or, if Congress members were elected in sufficient numbers, they turned out the ministries. The chief instruments of the Congress in this period were the boycott, non-co-operation and passive resistance, but, after the Simon Commission had been boycotted, the Congress, under the leadership of Mahatma Gandhi, took part in the final discussions leading up to the passing of the Government of India Act, 1935. On the introduction of provincial autonomy in 1937, the Congress for a short period refused to co-operate, although Congress members had been returned in strong majorities in several provinces. Ultimately, however, Congress agreed to let its members accept office and in most provinces the Congress membership provided the ministries.

The Muslim League.—Although Congress membership is open to all communities, it has always been a predominantly Hindu organisation. Under the leadership of Sir Syed Ahmed, the Muhammadans as a community abstained from political agitation in the early days of the Indian National Congress. In 1906, however, they determined to create an organisation to look after their own interests. Ideas of representation were in the air, and the Muhammadan leaders saw that they would have to press for separate representation. The Muslim League was the result. Its original objects were to protect the political and other rights of Indian Moslems, and

to promote friendship and union between the Muhammadan and other communities of India. In 1912-13, the original constitution of the League was altered to include the attainment of self-government in India under the British Crown; and from 1919-20 the League identified itself with the activities of the National Congress, till the Federation was introduced, when the League developed its own policy and worked independently of Congress. The Congress, however, has always endeavoured to obtain a strong Muslim membership and many prominent Muslim leaders have belonged to it.

The Basis of Indian Nationality.—One more influence must be noted—the development of local self-government. Although this development was not so marked as many had hoped, nevertheless it showed the growing interest of Indians in representative self-government on a small scale. It also proved the fact that Indian national feeling could not be satisfied with local self-government alone. Everything went to show that the unity of India was at last being realised. A common medium of speech had been given in the English language; a basis of common rights had been secured; common interests were being realised; a common organisation knit India together; in short, in spite of the vast differences of race, language, religion, and social customs among the Indian people, the foundation of an Indian nationality had been laid.

Defects of the Councils.—Apart from these general considerations, the Morley-Minto Councils themselves showed defects. In the first place, the electorate was not so arranged as either to stimulate the interest of the people as a whole in political matters, or to give satisfaction to those who actually were voters. The members of the various Legislative Councils were elected indirectly. Thus, the representatives of local Councils were elected by electors who were themselves elected. For the Imperial Council the election of members by the provincial legislatures was three times removed from the primary voters. There was very little connection between the representative and the primary voter. Constituencies were very small in voting numbers—usually only a few hundreds. The franchise was thus very restricted, and the actual number of representatives was small. In a country of the size of India, or even the size of its individual provinces, it is difficult to find a mean between perfect representation and a good working number on a legislative body,

but in all cases the representative system was on a minimum scale. Additional difficulties arose through the existence of various communities and interests, who either elected members separately or were represented by means of nomination. This difficulty remains under the new system, for, with the present composition of the Indian population, representation by communities or interests (communal representation) seems the only possible method of securing fairness.

Another, but minor, difficulty in the representative system under the Morley-Minto scheme was the large proportion of lawyers returned. The majority of members returned by the provincial legislative councils to the Imperial Legislative Council belonged to the legal profession. The same was true of provincial Councils. Except for seats specially reserved for landowners, or others, the proportion of lawyers returned by the more general constituencies was seventy per cent. The return of lawyers as members is accounted for largely by the fact that they are the class most interested in politics and most able to give the time and money necessary for political work. A large proportion of members of the House of Commons is business men, but as yet Indians had not made the necessary progress in industrial and commercial life to provide members from this class for the legislatures. Outside the legal profession, the abler Indians are mainly in government service, which disqualifies them from holding seats. Landowners are represented separately. The predominance of lawyers in the Councils led Mr. Montagu and Lord Chelmsford, in their Report on Constitutional Reforms, to suggest that such qualifications should be prescribed for rural seats as would disqualify lawyers from holding them.

The chief drawback of the Morley-Minto Councils was their failure to give any real legislative outlet to Indian members. In both the Indian and provincial Councils, though in the latter there was an elected majority, the Government was able to secure an official majority. In the Imperial Legislative Council the official majority, or, as it has been called, "bloc," was absolute. The non-official European members in all the Councils usually voted with the official members, a fact which sometimes encouraged racial feeling. The official majority in the Indian Legislative Council theoretically was justified insomuch as the responsibility of the Government to the Secretary of State had to

be maintained. Official members were rarely free to speak or vote as they chose. They voted together, in a body, in favour of all government measures. The Indian members were reduced to the position of critics, whose opinions were recorded in the proceedings. The debates were to some extent unreal. Under such a system the best qualities of the Indian members could not be extracted. That the Indian members were both useful and interested in legislation and administration was shown by their good work in the committees of the Council, where they exerted more influence than in the Council itself, by their moving of resolutions, and by the asking of questions. It may be added that many of the official members also disliked the officialisation of the Council. In the provincial Councils the Government usually had a majority, though in some instances bills were much modified either in committee or in Council because of non-official influence, and sometimes contemplated bills were not even introduced by Government to avoid the possibility of defeat by the non-Government majority. Another difficulty of the Morley-Minto system—and this difficulty was common to both official and non-official members—was the fact that the legislative powers of the Councils were very restricted. Parliamentary control over the Government of India had not been relaxed, nor the control of the Government of India over provincial governments. A large number of subjects was outside the scope of the powers of both types of council. The financial restrictions in particular were stringent, and, as all legislation implies financial considerations, the spheres of influence of the various councils were closely circumscribed.

Shortlived though they were, the Morely-Minto Councils served a useful purpose, in both a positive and a negative way. Positively, they proved that Indian elected representatives were both eager and able to do good public work. They had worked well, especially in the committee room and in consultation with officials. Negatively, they showed that the limitations under which they worked could with safety and advantage be removed. They did not satisfy Indian aspirations, but they pointed the way to a more representative and responsible system.

The Great War.—The immediate cause of the dissolution of the Morley-Minto system was the first Great War. The war was fought very largely on the principle of small European

nationalities being able to decide for themselves with whom they should associate in political life. This principle—the principle of self-determination—became one of the most fundamental principles of the war. It was given an additional impetus by the insistence of President Woodrow Wilson after the entry of the United States into the war. The principle was extended to India, but the many difficulties of the political and social structure of India stood in the way of its full application. The best Indian political opinion demanded responsible government of India within the Empire on the parallel of the Self-governing Dominions.

The Announcement of August, 1917.—The adoption of the new principle was signalised by the following announcement made by the Secretary of State in the House of Commons on the 20th of August, 1917—according to the Montagu-Chelmsford Report "the most momentous utterance ever made in India's chequered history" :—

"The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire. . . . I would add that progress in this policy can only be achieved by progressive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and the measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility."

The announcement was followed by an enquiry made in India in 1917-18 by Mr. E. S. Montagu, Secretary of State for India, and Lord Chelmsford, the Viceroy. The result of their enquiries was published in July, 1918, in their *Report on Indian Constitutional Reforms*, or, as it is usually known, the Montagu-Chelmsford Report. This Report, one of the most important of the several reports on Indian constitutional questions, contained a searching analysis of the constitutional system then existing, and made a number of

proposals for constitutional reconstruction, which, after criticism by the provincial and central governments in India, and review by a joint committee of both Houses of Parliament were finally incorporated in the Government of India Act, 1919. This Act was really an amending measure; the basic law of the Montagu-Chelmsford system was the Government of India Act, 1915, which consolidated the previous legislation affecting the system of government in India. The new system of government was introduced in 1921, and the provisions of the Act were extended to Burma in 1922.

2. THE DYARCHY

Importance of the Dyarchy.—The system of government introduced by the Government of India Act, 1919 has come to be known as the Dyarchy. Its historical value arises from the fact that it was one of the most interesting experiments in constitutional history and that it paved the way for federation. It also provided a model for the organisation of the Government of India in the Government of India Act, 1935.

The Legislatures.—The Montagu-Chelmsford system practically swept away the Morley-Minto system. Drastic changes were made in both the structure and character of the legislatures. The Indian legislature was made bicameral, with an upper house, or Council of State, and a lower house, or Legislative Assembly. The Council of State consisted of not more than sixty members, of which not more than twenty could be officials. Thirty-three were elected; the remainder were nominated. The Legislative Assembly consisted of 144 members of which 103 were elected, and forty-one, including twenty-six officials, were nominated. The statutory number was 140, but power was given in the Act to vary the numbers, provided the ratios of elected and non-elected members remained the same. In the provinces, the statutory membership varied from 125 in Bengal to 53 in Assam. Not more than twenty per cent. of the membership could be nominated officials; seventy per cent. had to be elected, and provided these ratios were maintained, the total numbers could be increased. The actual number in Bengal was usually about 140-144.

The Electorate.—The electorates were arranged on a communal basis—Muhammadan, non-Muhammadan, European,

Anglo-Indian, and according to interests—landholders, trade and commerce and universities. Nomination was used to secure representation for special interests, minor minorities, such as Indian Christians, and the depressed classes. Constituencies were arranged territorially, on a population basis. A certain proportion of seats was allotted to urban areas; the rest were rural. The system of election in all cases, both provincial and central, was direct. The franchise was determined on community (Muslims, Hindus, Europeans, etc.), interests (membership of chambers of commerce, landholding, graduates) and on the possession of property qualifications (payment of municipal taxes, road and public works cesses, union board or chaukidari union rate, assessment to income tax, etc.). Women were admitted to the franchise in several provinces: they were not given equal rights with men in the Act but provincial legislatures were empowered to enfranchise them.

The Principles of Dyarchy: Central Subjects.—The essential principle of dyarchy was the division of subjects into central and provincial, as between the Government of India and the provincial governments, and into reserved and transferred in respect to provincial subjects. The division of subjects and the devolution of authority to the provincial governments were settled in rules made under the Act. The central subjects included those which normally are undertaken by federal governments—foreign affairs, defence, major communications, shipping, coinage, customs, posts and telegraphs, copyright, civil and criminal, law and procedure, and certain all-India functions such as the geological and archæological surveys. Forty-four subjects were included in the central list, and also all matters not included in the provincial list. This provision is noteworthy as it indicated a preference for the Canadian type of federalism. In finance also, a line of division was drawn. The centre was given income tax, railway receipts, receipts from posts and telegraphs, customs, and the salt and opium taxes. The provinces were given land revenue, excise, income from forests and irrigation, stamp duties, registration fees and receipts from taxes imposed by them. They were supposed also to receive a share of increases in income tax, but were bound to pay contributions to the centre if required.

Powers of The Governor-General in Council.—In respect

to administration at the centre, the responsibility was placed entirely on the Governor-General in Council. By custom, his Executive Council consisted of six members of whom three were Indians. The Commander-in-Chief was an extraordinary member. The members of the Executive Council were in charge of the chief Executive departments. The Governor-General's powers were exercised subject to two limitations—one the Secretary of State, the other his own Council. According to the Act of 1915 "the superintendence, direction and control of the civil and military Government of India is vested in the Governor-General in Council, who is required to pay due obedience to all such orders as he may receive from the Secretary of State." By the Act of 1919, he had wide powers of assenting to, vetoing, or of reserving for the signification of His Majesty's pleasure, and of returning for further consideration bills passed by the Indian legislature. He also could exercise similar powers in relation to bills passed by provincial legislatures. He could stop proceedings in the Indian legislature on any subject on which he considered further action to be dangerous to the peace of India. He could convene a joint-meeting of the Council of State and Legislative Assembly. He could dissolve both houses or extend the sessions. He also convened them, subject to statutory limits. He could address either house. In the case of the houses failing to pass legislation which in his opinion was necessary to the good government of India, subject to the subsequent consent of His Majesty in Council, he could act as if the bill had been passed. In financial legislation no proposal for the appropriation of any revenue or monies for any purpose could be made save on his recommendation, and, with the consent of his Council, in cases where demands necessary to the proper discharge of his responsibilities were refused, he could act as if the assent of the Legislative Assembly had been given. He was also the final judge as to whether proposed appropriations fell within the heads of expenditure which might or might not proceed to the vote of the Legislative Assembly. A large number of measures could not be introduced into either chamber without his previous sanction. He had also wide powers of appointment. With his Council he appointed temporary judges of the High Courts. On his own responsibility he appointed a vice-president of his own Council. He also appointed the

president of the Council of State, and the first president of the Legislative Assembly, and approved appointments made by the Legislative Assembly. His approval was necessary for the appointment of the deputy-president of the Legislative Assembly. At his discretion he could appoint council secretaries from among the members of the Legislative Assembly. He also possessed wide powers of recommending appointments to the Secretary of State or to the Crown through the Secretary of State.

Powers of the Indian Legislature.—The Indian legislature was given very wide powers : it could make laws—

(1) For all persons, and all things, within British India ;

(2) For all subjects of His Majesty and servants of the Crown within other parts of India ;

(3) For all native Indian subjects of His Majesty, without and beyond as well as within British India ;

(4) For the government officers, soldiers and followers in His Majesty's Indian forces, wherever they are serving in so far as they are not subject to the Army Act ;

(5) For all persons employed or serving in or belonging to the Royal Indian Marine Service (now the Royal Indian Navy) ; and

(6) For repealing or amending any laws which for the time being are in force in any part of British India or apply to persons for whom the Governor-General in Legislative Council has power to make laws.

Unless expressly authorised by Act of Parliament, the Indian Legislature could not make or repeal a law affecting—

(1) Any Act of Parliament passed after the year 1860 extending to British India, including the Army Act and any amending Acts to it.

(2) Any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India.

The Indian legislature could not make any law affecting the authority of Parliament, or any of the unwritten laws, or constitution of the United Kingdom on which may depend the allegiance of any person to the Crown, or which might affect the sovereignty or dominion of the Crown over any part of British India. Without the previous sanction of the Secretary of State in Council the Governor-General in Legislative Council could not empower any court other than a

High Court to sentence any European British subject, or his children, to death, or abolish any High Court. Laws passed for the Royal Indian Marine Service (now the Royal Indian Navy) were effective only if the vessel in which an offence was committed was in Indian waters at the time of the commission of the offence.

The previous sanction of the Governor-General was necessary for the introduction of any measure—

(1) Affecting the public debt or public revenues of India, or imposing any charge on the revenues of India;

(2) affecting the religion or religious rites and usages of any class of British subjects in India;

(3) affecting the discipline or maintenance of any part of His Majesty's naval or military forces;

(4) affecting the relations of the Government with foreign princes and states;

(5) regulating any provincial subject (i.e., a subject under the control of the provincial legislatures, according to the classification adopted under the Act of 1919) or any part of a provincial subject which had not been declared to be subject to legislation by the Indian legislature;

(6) repealing or amending any Act of a provincial legislature;

(7) repealing or amending any Act or Ordinance made by the Governor-General.

In the event of either chamber refusing to introduce, or to pass any bill in a form recommended by the Governor-General, the Governor-General could certify that the passage of the bill was necessary for the safety, peace or interests of India and might sign it, thus making it an Act. Every such Act had to be laid before both Houses of Parliament, and had to receive His Majesty's assent. In a case of emergency the Governor-General could direct that an Act of this kind might come into operation immediately, subject to the possible disallowance of the Act later by His Majesty-in-Council.

An important sphere of authority of the Indian legislature was the determination of fiscal policy. During its existence the Montagu-Chelmsford system was responsible for the development of a wide range of protection for Indian industries.

System of Provincial Government.—The Government of India was not dyarchical. It preserved the main features of its predecessors, with the exception that the legislature had

more powers and that it was limited to a defined list of subjects. It was in the provinces that the dual or dyarchical system of government was introduced. The essential principle of dyarchy was that provincial subjects were divided into two classes, reserved and transferred. The reserved subjects were placed in charge of the Governor acting with his Executive Council, composed of European or Indian members of the Indian Civil Service and non-official Indians, in varying numbers, appointed for five years, the transferred in charge of the Governor acting with ministers. The theory underlying the distinction was that, though full responsible Government in India was the aim of the British Government, it could not be introduced till the Indian people had some experience of what responsible government implied.

Provincial and Transferred Subjects.—The list of provincial subjects was large ; it included some fifty-two items, the most important of which were local self-government, medical administration, education, public health, land revenue, famine relief, agriculture, fisheries, co-operative credit, forests, excise, the administration of justice, registration, factories, water supply and religious endowments. The transferred subjects included local self-government, medical and public health administration, education, except European and Anglo-Indian education, agriculture, co-operative credit, fisheries, excise, the development of industries, registration, the veterinary department, and religious endowments. The transferred subjects were selected by the Joint Select Committee, and were included in rules, not in the Act, so that they could be varied or extended. The broad principles on which subjects were divided were that the reserved side should include the subjects most essential for the continued existence of government, such as law and order, and finance, and that subjects which afforded opportunity for the application of local knowledge, and for social service, those in which Indians had shown particular interest, and those in which mistakes in policy and administration, though serious, would not be irremediable, should be transferred. Subjects in which the principles of administration had not been codified were not regarded as suitable for transfer, nor subjects which provincial governments continued to administer on behalf of the Government of India. The Governor-General and provincial Governors had power to decide cases of doubt

as between central and provincial, and reserved and transferred subjects respectively.

Administration of Transferred Subjects.—In the administration of transferred subjects, the ordinary canons of parliamentary government applied. Ministers were subject to a majority vote in the Councils. If they failed to maintain their position they had to resign. Governors had power of "certification" in reserved subjects i.e., they might restore cuts made in the budget by the Councils; they had no such powers on the transferred side. Nor could they "certify" that a law of any kind was essential in respect of a transferred subject. The legislatures had supreme powers on the transferred side. On the reserved side, the legislatures did not have supreme control. All legislative proposals were placed before them, but, as indicated, a Governor could "certify" legislation and restore cuts made by a legislature on the reserved side budget. Moreover, the legislature by an adverse vote could not compel Executive Councillors to resign: they were appointed by the Crown for a specified period—usually five years—and while the legislature might alter, or refuse to pass their proposals, it could not compel them to resign.

Powers of Provincial Legislatures.—The scope of the powers of the provincial legislatures was very wide; *mutatis mutandis,* it was similar to that of the Indian legislature. The Governors had powers of reserving bills for the consideration of the Governor-General, but the manner in which the power of reservation could be exercised was strictly circumscribed by the constitution.

Superintendence and Control.—The dualism in the executive government in the provinces was also subject to a dual type of control from the centre and by the Secretary of State. In relation to the reserved side provincial Governors were responsible to the Governor-General in Council and to the Secretary of State but in relation to the transferred side Governors were guided by the advice of their ministers unless they had reason to dissent from them, in which case they were required by their Instruments of Instructions "to have due regard to their relations with the Legislative Council and to the wishes of the people as expressed by the representatives therein." The constitution also provided that the Secretary of State in Council and the Governor-General in Council, by rule, might restrict the exercise of their power

of superintendence and control over the provincial governments in respect to the transferred subjects; and the limits of such control were laid down to safeguard the administration of central subjects, to decide questions arising between two provinces where the provinces concerned were unable to reach an agreement and to safeguard the exercise and performance of duties possessed by the Governor-General in Council or the Secretary of State in Council as prescribed in the Act. These duties concerned the safeguarding of imperial interests, the determination of the position of the Government of India with regard to questions affecting other parts of the Empire, borrowing, and the position of the High Commissioner of India. The other previously existing powers of superintendence and control of the Secretary of State and of the Governor-General were maintained with respect to the reserved side of government.

Joint Deliberation.—In practice, the element of dualism in the dyarchical system was removed by a system of joint deliberation between the two sides of government. Provincial governors were directed by their Instruments of Instructions to secure co-operation between the reserved and transferred sides—there was no specific provision for such co-operation in the Act itself. In practice, joint meetings of members of council and ministers were held regularly, under the presidency of the Governor. All matters of policy, whether belonging to the reserved or the transferred side, were discussed jointly in these "cabinet" meetings, the decisions of which were recorded as decisions in joint meetings. In the legislatures the executive councillors and the ministers were in charge of all matters connected with the policy and administration of their departments; all proposals whether affecting the reserved or transferred sides were made subject to the vote of the legislature. Executive councillors had to seek the approval of the legislature as eagerly as the ministers, and on every issue in which they failed to secure support the question had to be re-discussed in joint meeting with a view to the Governor determining whether he should take action independently of the legislature or not. In point of fact in very few cases did Governors "certify" legislation against the will of the legislature; the power of certification was however sometimes used in order to replace for reserved departments grants which had been refused by the legislature.

On the other hand, ministers who failed to secure the support of the legislature on any important point of policy had to resign. The principle of joint responsibility however did not develop under the dyarchical system except in cases where a motion of no confidence in a ministry as a whole was carried in a Legislative Council.

Relaxation of Control.—Throughout the existence of the dyarchical system the Secretary of State and the Governor-General, although constitutionally empowered to superintend provincial matters, consistently refused to intervene in the provincial transferred field. In the British Parliament the convention developed that neither questions nor discussions were permissible in connection with transferred subjects. The only control exercised by the Government of India was by means of conferences of provincial ministers arranged for the discussion of subjects of common interest. The ministers however were left an entirely free hand with regard to the carrying out of general principles decided on at such conferences.

Extent of Separation.—On the other hand, in the dyarchical, as in any dualistic system of government, it was impossible to effect a complete separation of subjects in the administration of transferred subjects. Scarcely any question of importance came up in which some proposal did not affect one or more of the reserved departments. The administration of government is arranged in departments for administrative convenience, but certain major subjects, such as peace and order, affect all departments. Moreover the provision of finance—a reserved function in the dyarchical system—is of vital importance in all questions of policy, whatever the subject. Ministers often complained that the reserved side absorbed most of the available finance; they could not develop a policy because of financial stringency. It is difficult to estimate how far this charge against dyarchy is sustainable because during a considerable portion of its existence financial stringency was prevalent not only in most of the provinces but at the centre. In some provinces, particularly in Bengal, it was claimed that the financial settlement made at the initiation of the dyarchical system (what came to be known as the Meston settlement) was not equitable. In Bengal, the budgetary position practically throughout the whole life of the dyarchy was unsatisfactory, with the consequence that the transferred side received a less than proportionate share of public funds.

Smoothness of Working.—The system of joint deliberation by means of joint meetings minimised friction. The earlier critics of the dyarchical system thought that from the very nature of the system friction would be so great as to cause a breakdown. In practice, such friction was absent. The executive councillors and the ministers worked harmoniously in all provinces. Obstructiveness on the part of executive councillors or irresponsible action on the part of ministers to discredit the system or to weaken the position of the executive councillors were not features of the dyarchical system. Indeed one of its most outstanding benefits was that ministers, hitherto untrained in public affairs, were brought into close contact with experienced administrators who, from their long knowledge of practical affairs and of the people, were able to offer them wise counsel both in policy and in the administration of their departments.

Benefits of Dyarchy.—The chief misfortune of the dyarchical system was that it failed to secure the support of the most strongly organised party in India, the Indian National Congress. The Congress consistently opposed it. Members of the Congress either abstained from taking any part in the elections, or if returned, they acted as an opposition. They refused to take office. If they were the majority in a legislature, they used their power to prevent other parties or coalitions from carrying on the ministry. The consequence was that in some provinces, especially Bengal, the government had to be carried on, sometimes for fairly long periods, without ministers; the transferred subjects were placed in charge of executive councillors. Nevertheless, dyarchy served the purpose for which it was devised; it provided a first-class training ground for both the people and the people's leaders. During its existence many public men received a training in the administration of government departments and in the conduct of business in the legislature. By experience, the legislatures came to recognise the limits of their powers. In some cases, major constitutional errors were made; for example, in Bengal, the legislature almost brought the system of education to a standstill by refusing supply for education. Such refusal could not be remedied by the Governor and a special meeting of the Legislative Council had to be convened in order that the legislature could remedy its mistake. Lessons such as these were well learned.

Recognition of their power bred a sense of responsibility among the members and there are many instances of laws being passed by dyarchical legislatures which were likely to be unpopular amongst the people but which were imperative on grounds of public policy.

The Simon Commission.—The Montagu-Chelmsford scheme was avowedly transitional in nature. The Government of India Act, 1919, contained a provision for the appointment of a Statutory Commission within ten years of the passing of the Act to enquire into the working of the system of government, the growth of education and the development of representative institutions in British India. The Commission was also required to report as to whether and to what extent it was desirable to establish the principle of responsible government or to extend, modify or restrict the degree of responsible government then existing in India, including the question whether the establishment of second chambers of the provincial legislature was or was not desirable.

The Commission referred to in the previous paragraph was appointed by the Secretary of State in 1927 and submitted its report in 1930. The Chairman was Sir John Simon, and it is usually known as the Simon Commission. Its report is one of the most complete surveys of the Indian system of government that has ever been made. The recommendations were, briefly, that the provinces should be given autonomy with responsible government, that the control of the hitherto reserved subjects should be transferred, that the legislatures should be based on a wide franchise and that the official "bloc" should disappear. It also recommended that while the Government of India should preserve its previous character, India should be organised on a federal system—the Indian States, not only British India, being included in the federation.

The Round Table Conferences, Communal Award, White Paper and Poona Pact.—The Simon Commission was boycotted by the Indian National Congress, and although the Commission's proposals were examined officially by the provincial and central governments, the real work of preparing the new constitution fell on the British Government. Three Round Table Conferences were held in London. These were meant to be representative of all types of opinion and interests in India, and also of the Indian Princes, but Con-

gress abstained from taking part in the first. Mahatma Gandhi however took part in the second, which prepared the way for federation. A third session was held in 1933 and in March 1934 the British Government issued a White Paper which became the substantive basis of the new constitution ; the basis of the White Paper proposals was the agreements reached in the conferences and the Communal Decision or Award, issued by the Prime Minister, Mr. Ramsay MacDonald, owing to the failure of the two main communities, the Hindus and Muslims, to come to an agreement regarding the allocation of seats in the legislatures. The Communal Award, the first concrete step towards the framing of the new constitution, contained in detail the allocation of seats in the Federal and Provincial legislatures, but almost immediately it was attacked by Mahatma Gandhi owing to a proposal to create separate electorates for the depressed classes. On the plea that the system would rend the Hindu community in two, the Mahatma threatened to starve himself to death unless it were replaced by joint electorates. The Award contained a provision that, if the communities concerned were in agreement its terms might be amended. Mr. Gandhi secured such agreement which is known as the Poona Pact ; this pact was accepted by the Imperial Government, and the principle of joint electorates for caste Hindus and the depressed classes was incorporated in the constitution. The number of seats allotted to the depressed classes was considerably increased by the Poona Pact.

Joint Select and Other Committees.—The next step in the evolution of the constitution was the appointment of a Joint Select Committee of Parliament. This Committee, subjected the proposals to a searching examination ; they heard evidence from all shades of opinion, official and non-official, and their report, and connected papers, provide an unrivalled mine of constitutional information. This report was quickly translated into a draft bill, which became law as the Government of India Act, 1935.

Several committees were appointed to assist the British Government in preparing for the bringing in of the new constitution. One committee, of which the Marquis of Lothian was chairman, made recommendations on the franchise ; it worked in co-operation with provincial committees, and its main proposals were incorporated in the constitution. After

the Act was passed, another committee, presided over by Sir Laurie Hammond, made recommendations on the delimitation of constituencies. Its recommendations were included in the appropriate Orders in Council issued under the Act. Sir Otto Niemeyer was appointed to make recommendations on the allocation of revenue; his report formed the basis of the financial arrangements for the provinces and federation.

The constitution was so drafted that it could be introduced separately in two sections—one bearing on provincial autonomy, the other on the federation. Provincial autonomy was introduced on the 1st April 1937. On the same date the Burma provisions were brought into effect: Burma accordingly was separated from India.

CHAPTER XXIV

THE GOVERNMENT OF INDIA (*Contd.*)

3. THE CONSTITUTION

Complexity of the Constitution.—The Government of India Act, 1935, although a masterpiece of draftsmanship, is the most complicated instrument in the whole range of constitutional history. This complexity, arises from a variety of causes, the chief of which is the unique nature of the problem which the constitution was designed to solve. The three basic purposes of the Act were federation, provincial autonomy with parliamentary government, and the separation of Burma from India, but, for reasons of policy, the British Government decided that the two latter purposes should be achieved without waiting for the first. Hence provision had to be made for the introduction of provincial autonomy and the separation of Burma without the process of federation being completed. In theory, when provincial autonomy was introduced on the 1st April 1937, the Government of India assumed the constitutional character of the Indian federation vis-a-vis the provincial governments, but in fact the Indian legislature remained as it was under the Government of

India Act, 1919. Certain changes were made in the character of the Indian executive, but actually the personnel remained as it was under the previous system. At the moment, the Government of India is in the anomalous position of working under two constitutions, the Government of India Act 1919 and the Government of India Act 1935, and it will continue so to act till the federation process is completed, or, in technical language, till Part II of the Act is brought into force.

Character of the Federation.—The Indian federation is unique in two respects. In the first place, the federation was substituted for a unitary type of government, the administrative control in which was by law centred in the Secretary of State, who in some respects was a statutory corporation (in his capacity as Secretary of State in Council) and who was vested with powers of superintendence and control "over all acts, operations and concerns which relate to the government or revenues of India." The powers of the provincial governments were derived by a species of delegation from the central authority and were exercisable subject to its control. With unimportant exceptions, the normal federal process in other countries has been the issue of a pact entered into by a number of political units each possessed of sovereign powers or autonomy and each consenting to surrender to the federal government a similar range of powers and jurisdiction. In India, the provinces had no original or independent powers or authority to surrender to the centre. In the second place, though the Indian States were under the suzerainty of the King Emperor, they were not technically parts of His Majesty's dependencies. Parliament could not pass legislation for them directly. Special arrangements were necessary to bring the States into the federation, as the rulers of the States were not prepared to transfer to the federal government the same range of authority as could be conferred upon it by the provinces. Thus it was necessary so to draft the constitution as not only to provide for representation of the Indian States in the federal legislature but to create an executive responsible to the legislature with regard to specified functions in relation to British India and also to the powers and functions in relation to the States in the federation which were accepted by them as applicable to their territories.

Safeguards.—A second unique feature of the constitution arises from the circumstances under which it was framed.

In the preliminary discussions leading up to the constitution, it became clear that unless various "safeguards" were included, there would be little hope of agreement. These safeguards appear in different guises. One is the conferment on the heads of the executive of special powers to meet crises. Another is the creation of a class of powers and duties, imposed on the Governor-General and Governors; the powers consist in the endowment of the Governor-General and Governors with different methods of exercising their functions and the duties are termed "special responsibilities." A third is the inclusion of specific constitutional provisions governing certain classes of subjects, such as commercial and professional discrimination, the administration of certain subjects, such as excluded and partially excluded areas, and the services; these provisions limit the powers of the legislatures. A fourth is the creation of special authorities or the enactment of special provisions to secure freedom from political or party influence in respect to finance, railways, and the services; a fifth is the enactment of particular provisions to cover specific issues, such as the protection of the police and certain propertied interests, e.g. landlords; and a sixth is the issue, by the Crown, of instructions to the heads of the Executive governments, in Instruments of Instructions, as to how their functions are to be exercised. The safeguards are also covered by constitutional restrictions on the legislative powers of the federation and provinces.

Special Powers of Executive in Crises.—One of the most important safeguards is the conferment on the Governor-General and Governors of powers to carry on the administration in case of crises, or of breakdown in the constitutional machinery. Some of these powers are normal: they are given in many constitutions: others apply specially to India. The Governor-General is empowered to promulgate ordinances during recesses of the legislature but this power is strictly circumscribed on two sides; it is liable to disallowance by the British Government and it has to be laid before the legislature on its reassembly. It automatically ceases to operate at the expiration of six weeks from the reassembly, or, if before the expiration of that period resolutions disapproving it are passed by both chambers, upon the passing of the second of these resolutions. The Governor-General is also empowered to promulgate ordinances with respect to certain functions

which, under the Act, he has to discharge in his discretion or in the exercise of his individual judgment. Such ordinances may continue in operation for a period up to six months but may be extended by another ordinance for a further six months. They are also liable to be disallowed by the British Government and an ordinance extending an ordinance must be laid before both British Houses of Parliament by the Secretary of State. The Governor-General is also empowered to enact certain measures. This power is also limited to "discretion" and "individual judgment" subjects ; every such act has to be laid by the Secretary of State before both Houses of Parliament. In the case of failure of the constitutional machinery the Governor-General is empowered to issue proclamations declaring that his functions, to the extent specified in the proclamation, may be exercised by him in his discretion, and assuming to himself all or any other powers vested in or exercisable by any federal body or authority, provided that he may not assume any other powers of the Federal Court. Such proclamations may be reviewed or varied by further proclamations ; they have to be laid before both Houses of the British Parliament and unless and except in the case of a proclamation revoking a previous proclamation, must cease to operate at the expiry of six months unless a resolution approving their continuation is passed by both Houses of Parliament, in which case the proclamations may continue for twelve months. If at any time the government of the federation has been carried on by proclamation for a continuous period of three years, then the proclamation must cease to have effect and the government of the federation must be carried on in accordance with the other provisions of the Act subject to any amendment which Parliament may think fit to make. Similar powers are also conferred on provincial Governors.

General Character of Executive.—Another of the so-called safeguards is the endowment of the Governor-General and provincial Governors with different types of powers. All executive power in India is technically vested in the King and is exercisable by the Governor-General or the Governor as the King's representative. The full title of the Governor-General is Viceroy and Governor-General of India. The title "Viceroy" has constitutional significance only in virtue of the fact that the Governor-General in the capacity of

Viceroy will exercise the powers of the Crown in relation to the Indian States outside the federal sphere. The powers vested in the Crown in relation to the Indian States, except in so far as they are necessary for federal purposes, and in so far as the rulers have assented to the transfer of such power to the appropriate federal authority, are exercised by the Viceroy as Crown Representative. Such powers are outside the scope of the federal constitution.

Discretion and Individual Judgment.—In the execution of their normal constitutional functions, the Governor-General and provincial Governors act in three capacities. First, as Governor-General or Governor as the case may be ; secondly, as Governor-General or Governor acting in his discretion, and third as Governor-General or Governor acting in his individual judgment. The Governor-General or Governor acting without qualification implies that in each case he acts on the advice of ministers ; in other words, when the Governor-General or Governor takes any action not in his discretion or in his individual judgment, the responsibility for such action lies with his ministers. To this extent the system of government in India is of a purely parliamentary or responsible character. Discretionary action means that the Governor-General or a Governor acting in his discretion may, but need not consult his ministers before taking action. Action according to individual judgment means that the Governor-General or a Governor must consult his ministers before taking action but need not accept their advice. All cases in which the Governor-General or a Governor may act according to his discretion or in his individual judgment are prescribed in the constitution. The manner in which the Governor-General or Governor should exercise his discretion and individual judgment is laid down in their Instruments of Instructions.

Special Responsibilities.—The exercise of these powers is intimately connected with a special class of duties known as "special responsibilities." In the case of the Governor-General these special responsibilities are as follows :—(1) the prevention of any grave menace to the peace or tranquillity of India or any part thereof, (2) the safeguarding of the financial stability and credit of the federal government, (3) the safeguarding of the legitimate interests of minorities, (4) the securing to, and to the dependants of, persons who are

or have been members of the public services of any rights provided or preserved for them by or under the Act and the safeguarding of their legitimate interests, (5) the securing in the sphere of executive action of the purposes which the provisions with respect to discrimination are designed to secure in relation to legislation, (6) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment, (7) the protection of the rights of Indian States and the rights and dignities of their rulers, and (8) the securing that the due discharge of his functions with relation to matters with respect to which he is required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

The special responsibilities of provincial Governors are, *mutatis mutandis,* similar to those of the Governor-General with the exceptions that no special responsibility for the financial stability of the provinces is imposed on governors —the financial stability of the provinces is a matter for the provincial ministries—and that Governors have a special responsibility for the administration of partially excluded areas. Provincial Governors also have a special responsibility relating to the execution of orders passed by the Governor-General.

Means of Exercising Special Powers.—In addition to laying "special responsibilities" on Governors, and endowing them with "discretion" and "individual judgment" powers, the Act makes specific provision to safeguard the exercise of those powers vis-a-vis the legislatures, and enunciates general constitutional principles governing their exercise. Thus, while the legislatures are empowered to make rules for the conduct of their business, the heads of the executive are empowered to make rules to regulate the business in regard to any matter which affects their "discretion" or "individual judgment" powers, and also for other matters, given in detail in the description of the constitution which follows. If the rules made by the two authorities are inconsistent, the Governor-General's or Governor's rules must prevail. With regard to the provision of finance, the Act provides that the budget be divided into two parts, one, expenditure charged on the revenues of the province, which is not subject to the

vote of the legislature, and expenditure for other purposes, which is submitted as demands to the legislature in the normal parliamentary manner. Governors are also empowered to make rules of executive business to ensure that they are kept aware of their special constitutional functions.

Financial Safeguards.—As regards finance, the chief safeguard is the creation of the Reserve Bank. The Reserve Bank was established in 1935, under the Reserve Bank of India Act, 1934, passed by the Indian Legislature. The Reserve Bank is managed by a board of directors consisting of a governor, two deputy-governors and four directors appointed by the Governor-General, eight elected directors, and an official nominated by the Government of India. The Governor-General exercises his discretion in appointing the governor and deputy-governors, in fixing their terms of service, in the supersession of the central board and in the liquidation of the Bank. He exercises his individual judgment in nominating directors. The Reserve Bank controls currency, credit, the issue of bank notes, and reserves. No bill affecting currency or coinage or the constitution and functions of the Reserve Bank can be introduced in the legislature save with the previous sanction of the Governor-General, acting in his discretion. Both the federation and provinical governments have powers of borrowing, but no province can borrow outside India without the assent of the federal government. The federation may lend to or guarantee loans for the provinces; it may refuse to sanction or guarantee a loan and disputes may be settled by the Governor-General acting in his discretion. The constitution also contains provision for accounts and audit, and control of expenditure is also secured by a provision, specially included in the Governors' Instruments of Instructions, that finance ministers must be consulted on all proposals involving expenditure.

The Federal Railway Authority.—The Act provides that the executive authority of the federation in respect of the regulation, construction, maintenance and operation of railways, shall be exercised by a Federal Railway Authority. The function of this body is to secure the working of the Indian railways on sound business principles, free from political influence on the one side and government pressure on the other. The Federal Railway Authority consists of seven persons of whom not less than three-sevenths must be

persons appointed by the Governor-General acting in his discretion. The Governor-General also at his discretion appoints the president. No one can be appointed to be a member of the Authority unless he has had experience in commerce, industry, agriculture, finance or administration, or has within the twelve months preceding his appointment been a member of a legislature, or been a government or railway official in India. The members hold office normally for five years and are eligible for re-appointment. Their terms of service are controlled by the Governor-General. The Act lays down general rules of procedure for the Authority and also certain directions and principles to be observed by it. The Authority is required to act on business principles, due regard being had by them to the interests of agriculture, industry, commerce and the general public ; in particular, it is required to make proper provision for meeting out of the receipts on revenue account all expenditure to which such receipts are applicable under the provisions of the Act. The federal government may issue instructions on questions of policy, and if any dispute arises between them and the Authority the decision of the Governor-General acting in his discretion is final. The Governor-General has also the right to give directions to the Authority on subjects affecting his special responsibility or on which he has to act in his discretion or individual judgment.

The Federal Railway Authority is a body corporate and may sue and be sued in its own name. Land to be acquired compulsorily for railways must be acquired by government. Provision is made for a railway fund to which receipts are to be paid and from which various kinds of expenditure may be met ; any surplus is to be shared with government. The accounts have to be audited by the Auditor-General of India.

Railway Rates Committee and Railway Tribunal.—Provision is also made for the appointment of a railway rates committee to advise the federal government in case of complaints against the rates fixed by the Authority. The constitution requires that the federation and the federated States should afford facilities for through traffic on the railways for which they are responsible. Discrimination, undue preference and unfair or uneconomic competition are forbidden. Provision is made for the appointment of a railway tribunal to decide disputes relating to traffic rates or railway construc-

tion between the Authority and the federated States; this tribunal is presided over by a judge of the Federal Court, who holds office for five years, and it must include two other members appointed by the Governor-General from a panel of eight who are persons of administrative, railway or business experience.

Chief Railway Commissioner.—The head of the executive staff of the Authority is the Chief Railway Commissioner, who must be a person with experience in railway administration; he is appointed by the Governor-General exercising his individual judgment after consultation with the Authority. The Chief Commissioner is assisted by a financial commissioner appointed by the Governor-General and by such other additional commissioners, who must have experience in railway administration, as the Authority on the recommendation of the Chief Railway Commissioner may appoint. The Chief Railway Commissioner cannot be removed from office except by the Authority with the approval of the Governor-General exercising his individual judgment. The financial commissioner cannot be removed from office except by the Governor-General in his individual judgment. The Chief Railway Commissioner and the financial commissioner may attend any meeting of the Authority and the financial commissioner has the right to require any matter which relates to finance to be referred to the Authority.

Commercial Discrimination.—The safeguards against discrimination cover a variety of issues. British subjects domiciled in the United Kingdom are declared to be exempt from any federal or provincial law in so far as it imposes any restriction on their right of entry into British India or imposes by reference to their place of birth, race, descent, language, religion, domicile, residence or duration of residence, any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding or disposal of property, the holding of public office or the carrying on of any occupation, trade, business or profession. The exemption does not apply in cases where British subjects of Indian domicile are subject to similar restrictions in the United Kingdom, nor to quarantine and the deportation of undesirables. No federal or provincial law which imposes any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom or Burma

or companies incorporated under the laws of the United Kingdom or Burma. For the purposes of this part of the Act, a law is deemed to be such as to discriminate against such persons or companies if it would result in any of them being liable to greater taxation than that to which they would be liable if domiciled in British India or incorporated under the laws of British India. Reciprocity is the central principle governing the commercial discriminatory provisions of the Act, as between India and Britain. No ship registered in the United Kingdom may be subjected by any federal or provincial law to any treatment affecting either the ship or master of a crew, passenger or cargo which is discriminatory in favour of ships registered in British India except in so far as the ships registered in British India are for the time being subjected by or under any law of the United Kingdom to treatment of a like character which is similarly discriminatory in favour of ships registered in the United Kingdom. A similar provision applies to aircraft. Companies incorporated in the United Kingdom and carrying on business in India are declared eligible for any grants, bounties or subsidies payable out of the revenues of the federation or of a province for the encouragement of trade or industry to the same extent as companies incorporated in British India, but such subsidies are not payable if subsidies are paid in the United Kingdom to the companies. Power is also given to the federal or provincial legislatures to require that if a subsidy is paid to a company which at the date of the passing of an Act by them was not engaged in British India in the branch of trade or industry for the encouragement of which the grant is given, then that company shall not be eligible for a grant unless it is incorporated in British India or in a federated State and a proportion not exceeding one half of the members of its governing body are British subjects domiciled in India or subjects of a federated State and unless the company gives such reasonable facilities as may be prescribed for the training of British subjects domiciled in India or for subjects of a federated State.

Professional and Technical Discrimination.—The Act provides that, with respect to professional and technical qualifications in general and medical qualifications in particular, there can be no discrimination as between persons qualified in India and those qualified in the United Kingdom. The

Governor-General or Governor, as the case may be, is required to give previous sanction to any bill or amendment prescribing any professional and technical qualifications and he may not give his sanction unless he is satisfied that the proposed legislation is so framed as to secure that no person lawfully practising a profession, carrying on a trade or occupying a public office is not debarred from continuing his work after the law comes into effect ; in the discharge of his functions, the Governor-General or Governor exercises his individual judgment.

The Services : General Provisions.—The Act contains an extensive series of provisions, some of which are of the nature of safeguards, governing the services of the Crown in India. With regard to defence services, the main principles are the control of His Majesty in Council of defence appointments, the power of His Majesty or any person authorised by him to grant commissions in the naval, military and air forces raised in India, the control of the Secretary of State, with the concurrence of his advisers, of their conditions of service and the charging on the federal revenues of the pay and allowances of the defence forces. In respect to the civil services, it is provided that every civil servant holds office during His Majesty's pleasure. No civil servant may be dismissed from service by any authority subordinate to that by which he was appointed, and no person may be dismissed or reduced in rank unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken with regard to him. Appointments to the civil services are made by the Governor-General or Governors as the case may be, or by such persons as they may direct. The conditions of service must be prescribed by rules, and the rules must be so framed as to preserve service rights which existed before the new constitution came in, and rights of appeal. Compensation has to be paid in the case of the premature abolition of some types of posts. The legislature may regulate conditions of service provided that no Act may deprive any civil servant of the fundamental rights prescribed in the constitution.

The Imperial Services.—Appointments to the Indian Civil Service, the Indian Medical Service (civil) and the Indian Police Service are made by the Secretary of State who is required to make rules specifying the number and

character of certain "reserved posts." The Secretary of State is also required to make rules governing the conditions of service including pensions, leave, medical attendance and rights of appeal, of services recruited by him. He has annually to lay particulars of appointments before Parliament, and the Governor-General is required to report on the working of the system of imperial recruitment as he thinks fit. The Secretary of State may also fill posts in connection with irrigation, if he thinks this course necessary in the interests of efficiency. The Governor-General, or Governor as the case may be, acting in his individual judgment, may regulate promotion and suspension.

Judicial Posts.—With regard to judicial offices it is laid down that a Governor, exercising his individual judgment shall make appointments to district judgeships after consultation with the High Court. Provincial Governors are also required to make rules defining the standard of qualifications of the subordinate civil judicial service, in consultation with provincial High Courts and Public Service Commissions. The Act contains also a number of provisions regarding recruitment to special posts by the Secretary of State. In the case of railway services, the Federal Railway Authority is given the powers of the Governor-General with respect to recruitment, subject to the condition that the Authority must consult the Public Service Commission with regard to the service rules of the higher grades in the railway services and that special consideration must be given to members of the Anglo-Indian community. Provision is also made for the customs and post and telegraph services, court officials, the staffs of the High Commissioner for India and the auditor of Indian Home accounts. Officers of the Political department of the Government of India are also guaranteed the rights they enjoyed before the new constitution was introduced.

Pay and Pension.—Apart from these constitutional provisions, the main safeguards of the services are that the emoluments of the imperial services and posts are borne on the revenues of the federation or provinces i.e. are non-voted. The Governor-General and provincial Governors have special responsibilities for securing the rights of the services, and in regard to most service matters they exercise their functions either in their discretion or in their individual judgment. Pensions are also subject to constitutional guarantee; the

claims of all officers paid by the Secretary of State are primarily against the federal government and subsequently are adjusted between the federal and provincial governments. Pensions of retired officers are exempt from Indian taxation if they reside permanently outside India. The Governor-General is not only responsible for the payment of pensions but may borrow in the United Kingdom for the purpose on the security of Indian revenues.

The general condition of service prescribed in the Act is that no one who is not a British subject is eligible to hold office under the Crown in India. The Governor-General and provincial Governors, however, are empowered in their discretion to make eligible for appointment rulers or subjects of federated or of other specified States, natives of tribal areas or of territories adjacent to India. Women are also declared eligible to hold civil posts but the Governor-General or provincial Governors may make rules specifically excluding them from certain posts or classes of posts.

With regard to the services with which he is concerned, the Secretary of State is required to exercise his constitutional functions with the concurrence of his advisers.

Public Service Commissions.—The Act also sets up public service commissions for the federation and provinces. Two or more provinces may agree that there may be one public service commission for those provinces, or that the public service commission for one of the other provinces shall serve the need of all the provinces. The federal public service commission, if requested by the Governor of a province, may also serve the needs of that province. The appointments of chairman and other members of a public service commission are made by the Governor-General or provincial Governor as the case may be, in his discretion, but at least one half of the members of every public service commission must be persons who, at the dates of their appointments, have held office for at least ten years under the Crown in India. A provision is also made for securing the judicial independence of the chairman and members. On ceasing to hold office the chairman of the federal commission is not eligible for further employment under the Crown in India and the chairman of a provincial commission is eligible only for appointment as chairman or member of the federal commission, or as chairman of another provincial commission, but not for any

other employment under the Crown in India. No other member of the federal or any provincial commission is eligible for any other appointment under the Crown in India without the approval of the Governor-General or Governor as the case may be.

The Police Services.—The constitution contains several provisions to safeguard the police services. Where it is proposed that the Governor of a province should make or amend or approve of any rules, regulations or orders relating to any police force, civil or military, he is empowered to exercise his individual judgment with respect to the proposal unless it appears to him that it does not relate to or affect the organisation or discipline of the police. Also, a Governor acting in his discretion is required to make rules to secure that no records or information relating to the sources from which information has been or may be obtained with respect to the operations of persons committing or conspiring to commit crimes of violence, may be disclosed by any member of any police force to another member of that force except in accordance with the directions of the inspector-general or commissioner of police, or to any other person except in accordance with the directions of the Governor given in his discretion, or by any other person in the service of the Crown to any person except in accordance with the directions given by the Governor in his discretion. Previous sanction of the Governor-General or Governor, as the case may be, each acting in his discretion, is also required to the introduction in any chamber of a legislature of a bill or amendment which repeals, amends or affects any law relative to any police force.

Excluded and Partially Excluded Areas.—Excluded and partially Excluded areas are defined in the Act as "such areas as His Majesty may, by Order in Council, declare to be Excluded and partially Excluded areas." Excluded areas are areas in which the condition of the people is so primitive that they cannot take part in the ordinary constitutional machinery, such as the Chittagong Hill Tracts in Bengal, the Naga and Lushai Hills districts in Assam, the Laccadive Islands in Madras, and Spiti and Lahaul in the Punjab. The total number of excluded areas in India is eight. Partially excluded areas are those in which the people, while more advanced than those in excluded areas, are not sufficiently advanced in education or economic status to be left without

special protection, such as the district of Darjeeling in Bengal, the Chota Nagpur Division in Bihar and the Garo Hills in Assam. The inhabitants in partially excluded areas take part in the normal constitutional processes of electing members to the legislature.

The Act empowers the British Government at any time, by Order in Council, to direct that the whole or any part of an excluded area may become a partially excluded area and that the whole or any part of a partially excluded area shall cease to be partially excluded. Certain powers are also given to adjust boundaries of excluded and partially excluded areas and, in the case of provincial boundaries being altered, to declare that any territory not previously included in a province may be excluded or partially excluded. With regard to administration, the Act provides that the executive authority of a province normally extends to excluded and partially excluded areas but that no federal or provincial legislation shall apply to such areas unless the Governor so directs by public notification. In giving such direction, the Governor may direct that the Act may apply to the areas subject to any exceptions or modifications as he thinks suitable. The Governor is also empowered to make regulations for the peace and good government of excluded areas and partially excluded areas; such regulations may repeal or amend any federal or provincial act or any existing law applicable for the time being to the areas in question. These regulations have to be submitted by a Governor to the Governor-General and cannot have effect until assented to by him. In respect to excluded areas a Governor exercises his functions in his discretion.

Other Safeguards.—Other types of safeguards, inherited from previous constitutional practice, and inherent in the system, are the superintendence of the Secretary of State over the Governor-General and of the Governor-General over provincial Governors in matters in which they have to act in their discretion or exercise their individual judgment. The Act provides that the Governor-General and provincial Governors shall be under the general control of and comply with such particular directions as may be given from time to time by the Secretary of State or the Governor-General, as the case may be, but the validity of anything done by them shall not be called in question on the ground that it was done

otherwise than in accordance with this provision. Specific provision is also included to safeguard certain types of property. No person may be deprived of his property in British India save by authority of law and no legislature may make any law authorising the compulsory acquisition for public purposes of any land, commercial or industrial undertaking unless the law provides for the payment of compensation. Further, no bill or amendment making provision for the transference of public ownership of any land or for the extinguishment or modification of rights therein, including the rights of privileges in respect of land tenure, may be introduced in any chamber of a legislature without the previous sanction of the Governor-General or a provincial Governor, as the case may be, acting in his discretion.

Restrictions on Legislative Powers.—The safeguards and also the general constitutional limits of the powers of legislatures in India are summed up in the provisions of the Act which govern restrictions on legislative powers. Unless the Governor-General in his discretion thinks fit to give previous sanction, no bill or amendment may be introduced in the federal legislature which (1) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India ; or (2) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor ; or (3) affects matters in respect to which the Governor-General is, under the Act, required to act in his discretion ; or (4) repeals, amends or affects any Act relating to any police force ; or (5) affects the procedure for criminal proceedings in which European British subjects are concerned ; or (6) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein ; or (7) affects the grant of relief from any federal tax on income in respect of income taxed or taxable in the United Kingdom. The restrictions on the powers of provincial legislatures are similar.

Saving Clauses.—The Act also contains the usual saving provisions with regard to the powers of legislatures in the British Empire other than that of the United Kingdom itself. These are expressed as follows :—"Nothing in this Act shall

be taken—(1) to affect the power of Parliament to legislate for British India, or any part thereof; or (2) to empower the Federal Legislature, or any Provincial Legislature: (*a*) to make any law, affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize courts; or (*b*) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgment; or (*c*) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court."

Communal Representation.—The constitution is the issue of many compromises; otherwise no substantial measure of agreement could have been reached among the many communities and interests concerned. The existence of so many safeguards is the chief index of such compromises; but the most far-reaching of them lies in the construction of the legislatures. In the constitution of 1935, the previous system of communal representation was not only maintained but extended. In the Morley-Minto and Montagu-Chelmsford legislatures, separate representation was provided for only the most important communities and interests; minor minorities and less important interests were represented by means of nomination. Nomination was strongly resented as a method of representation for the reason that nominated members were regarded as creatures of government. In the new constitution, accordingly, nomination was reduced to a minimum. It was abandoned altogether for lower houses and rètained only to a very minor degree in the case of the Council of State and provincial second chambers. To safeguard the interests of minorities, communal and sectional representation had to be extended. Seats had to be allotted to Indian Christians, Anglo-Indians and labour. Special constituencies had also to be made for women. Provision had also to be

made for the depressed classes and for backward areas and tribes. The issue of all these claims and compromises is that each legislature in India is a kaleidoscope of community, religion, interest and sex.

Construction of Legislatures.—In the construction of the legislature, no single principle was adopted. In the federation, the bicameral system of the dyarchy was maintained, but, whereas in other federations the chambers are constituted on the principle of direct representation of the people in the lower house on a population basis, and of direct or indirect election to the upper house on a "state" or "province" basis, in the Indian legislature the Council of State is elected directly and the Federal Assembly indirectly. The reason for this unusual arrangement is that the framers of the constitution were apprehensive that the direct system for the lower house would result in the creation of so large constituencies that direct contact between them and their representatives would be impracticable. They also considered that the burden on candidates and on provincial administrations—the latter already heavily taxed by provincial elections—would be too heavy.

No Common Principle.—The bicameral system was prescribed in some provinces—Madras, Bombay, Bengal, the United Provinces, Bihar and Assam; the unicameral in the rest. In the allocation of seats to provinces and communities in both the federation and provinces no single principle could be applied. In some cases, a strict population ratio, was the determinant; in others only a rough population basis was adopted. In the case of smaller communities and special interests, an empirical figure was fixed which in the words of the Joint Select Committee's Report "may be regarded as striking a just balance between the claims of the various interests, and as affording an adequate representation for them." In the case of the European community, which is relatively small in number but important in respect of commercial and financial interests and influence, and of some other communities, the guiding factor was an agreement reached by several minority communities—Muslims, depressed classes, Indian Christians, Anglo-Indians and Europeans—which was placed before the second Round Table Conference. In the federal legislature, seats are allotted by provinces and to the major communities in provinces on a rough population basis. Thus in the Council of State and Federal Assembly,

Bengal, Madras and the United Provinces, the most populous provinces in India, receive respectively 20 and 37 seats each although their populations are not even approximately the same. Bombay, the Punjab and Bihar receive 16 seats each in the Council of State and 30 in the Assembly. Communal representation in the federation is different in the case of the Council of State and the Assembly. In the Council of State seats are given to the General community, scheduled castes, Sikhs, Muhammadans, Anglo-Indians, Europeans, Indian Christians and women. The same communities and women are also given seats in the Federal Assembly but in it the quota of scheduled caste seats is reserved from the general seats, and special representation is given to commerce and industry, landlords and labour.

States' Seats.—The representation of the States in both the Council of State and the Federal Assembly had to be determined by various factors owing to the large number of states to be represented and the limited number of seats. In the Council of State, the States' seats are of three categories—those filled continuously by one State, those filled up in alternation by two or more States, and those filled by representatives of groups of minor States. States' seats in the Assembly were distributed on a very rough population basis as it was found necessary to reduce the number of seats available to the most populous states so as to secure separate representation for as many States as possible. The principles of alternation and group representation were also followed in the Assembly.

Provincial Legislatures.—In the provinces seats in the legislature were allocated as between the major communities on the basis of population and as between minor communities and special interests on similar principles to those mentioned above. The actual allocation of seats depends on local circumstances. Thus, in all provinces except the North-West Frontier Province and Orissa, special seats are reserved for women. In these two provinces it was impracticable, for social or other reasons, to create a women's constituency. In some cases, e.g., the North-West Frontier and Sind, it was impossible to create reserved scheduled caste seats. In all provincial upper houses a specified number of seats is filled by nomination. These seats, the sole remnant of the previously existing system of nomination with the exception of

six seats in the Council of State, in the words of the Instruments of Instruction to Governors—"shall be so apportioned as in general to redress so far as may be, inequalities of representation which may have resulted from election, and in particular to secure representation for women and scheduled castes in the second chamber."

Scheduled Castes.—As already indicated, the system of representation for the scheduled castes was determined by the Communal Award as later altered by the Poona Pact. The term "scheduled castes" used in the Constitution Act was adopted by the Government of India and the Secretary of State, at the suggestion of the Government of Bengal, to replace the phrase "depressed classes." Before the Act was passed there was considerable controversy in the Hindu community regarding the classes which should be given separate representation on the ground that they were depressed. One school of opinion thought that the criterion for separate representation should be untouchability. Another thought that all castes and tribes under the general level of development, including primitive races and tribes, should be given special constitutional protection. The problem was ultimately solved on a provincial basis; each provincial government had to make recommendations regarding the classes or castes which in their opinion required special representation, and the recommendations of the local governments, after examination by the Government of India and the Secretary of State, were ultimately included in a schedule of castes specified in the Government of India (Scheduled Castes) Order of 1936, which supplements the electoral provisions in the schedules to the Act. The list of castes varies from province to province. In Bengal the schedule was prepared on the basis of social and political backwardness of the castes, and the necessity of securing for them special representation to protect their interests. The number of castes in the Bengal list is 76, of which the most numerous are the Namasudras, Rajbansis, Sunris and Bagdis. The Bengal list includes several backward tribes such as the Santals and Garos, some of whom are indigenous to some other provinces. No Indian Christian may be included as a member of the scheduled castes nor (in Bengal) any person who professes Buddhism or a tribal religion. Only members of primitive tribes who profess to be Hindus are included in the list.

Scheduled Castes Elections.—The system of election devised to meet the terms of the Communal Award as amended by the Poona Pact was as follows :—Seats were reserved for members of the scheduled castes in General (Non-Muhammadan) constituencies where the scheduled castes were most numerous. In every case where there is a scheduled caste reserved seat there must also be a General non-reserved seat, as the essential principle of the Poona Pact is joint election. Members of the scheduled castes in these constituencies first elect a panel of candidates who belong to the scheduled castes only ; this panel must not exceed four for each reserved seat. After this primary election, the candidates so elected proceed to a final joint election at the same time as election is made to the non-reserved seat. At the final election all voters whether they belong to scheduled castes or not, may vote for all the candidates according to the number of seats to be filled. In this way caste Hindus are able to vote for scheduled caste candidates in the final election, and scheduled caste electors for caste Hindus. In several provinces, e.g. Bengal, the cumulative system of voting is used in these joint constituencies.

Instruments of Instruction: Minorities.—The Instruments of Instruction may be described as the key to the constitution. They give directions as to how the principles of parliamentary government, including the joint responsibility of the cabinet, are to be applied ; they explain what "discretion" and "individual judgment" imply ; and they give directions as to how "special responsibilities" are to be interpreted. They also contain orders regarding the reservation of legislation. The Instruments of Instruction supplement the "safeguard" provisions of the Act ; with respect to minorities, for example, Governors are instructed in the following terms :—

"Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number or their primitive condition or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare upon joint political action in the Legislature, shall

not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and, so far as there may be in his Province at the date of the issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public."

Other Provisions.—The Instructions to Governors also cover the rights of the services, discrimination, the protection of the rights of Indian States, efficiency in irrigation, and the administration of partially excluded and excluded areas. Financial administration is covered by an instruction that finance ministers shall be consulted upon any proposal by any other ministers that affects the finances of a province and that no reappropriation within a grant may be made by any department save the finance department, except under rules approved by the finance minister. Any case in which the finance minister does not approve of the approvals must be brought before the cabinet.

Reservation of Bills.—With regard to reservation, the Governor-General and Governors must reserve for the consideration of the Secretary of State or the Governor-General, as the case may be, the following classes of bills—(1) any bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India ; (2) any bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Act designed to fill ; (3) any bill regarding which he feels doubt whether it does or does not offend against the purposes of the discrimination provisions of the Act, or the provisions governing the compulsory acquisition of land without compensation and the transference to public ownership of land, and the extinguishment or modification of rights therein including rights or privileges in respect of land revenue ; and (4) any bill which would alter the character of the

Permanent Settlement. Governors are also directed to withhold assent to Bills on any ground which appears to them in their discretion to render such action necessary or expedient, having regard to the bearing of the provisions of the bill on any of their special responsibilities.

Governor-General's Instructions.—The Governor-General's Instrument of Instructions contains several items covering the relations of the federal and provincial governments; these cover such points as the Governor-General giving unbiased consideration to the views of provincial governments, co-operation between provincial governments and the federation, and the extent to which the provinces may be affected by federal legislation on subjects in the concurrent list. In assenting to provincial laws on concurrent subjects, the Governor-General is instructed to have "due regard to the importance of preserving substantially unimpaired the uniformity of law which the Indian Codes have hitherto embodied." He is also placed under the obligation to consider the interests of the provinces before giving his previous sanction to legislative proposals which may affect provincial finances.

Amendment of the Constitution.—The Government of India Act, 1935, has to be read with the numerous Orders in Council issued under its provisions as well as the Instruments of Instructions. The Orders in Council cover a wide field—electoral qualifications, partially excluded and excluded areas, scheduled castes, the Federal Court, High Court judges, corrupt practices at elections, distribution of revenues, allowances of Governors, and other matters. The general principles of the constitution are in the Act; the Orders in Council supplement them. The Order-in-Council method of drafting was adopted also to provide an easier method of amending the non-essential parts of the constitution. A special procedure for such amendment is prescribed; it also applies to some of the less fundamental principles contained in the Act itself.

Procedure of Amendment.—The federal legislature or any provincial legislature on motions proposed in each chamber by a minister on behalf of the cabinet, may pass a resolution recommending amendment of the Act or of Orders in respect to certain subjects; on such motions being made, the legislatures may present the Governor-General or the Governor an address for submission to the Crown praying that the Crown may be pleased to communicate the resolution to

Parliament. When such resolution has been communicated, the Secretary of State within six months must cause it to be laid before both Houses of Parliament with a statement of the action which it may be proposed to take. When forwarding such resolutions, the Governor-General or Governors must transmit their opinions on the proposed amendments with special reference to the effect that they may have on minorities. They are also required to forward the views of the minority concerned and to state whether the majority of the representatives of that minority in the federal or provincial legislature, as the case may be, are in favour of the proposal. In performing their duties the Governor-General and Governors act in their discretion.

Subjects of Amendments.—The subjects on which amendments may be forwarded are, (1) the provisions relating to the size or composition of the chambers of the federal legislature, the method of choosing, or the qualifications of members of that legislature, provided that the amendment may not vary the proportion between the number of seats in the Council of State and the Federal Assembly, or, with respect to the Council of State and the Federal Assembly, the proportion between the number of seats allotted to British India and the number of seats allotted to Indian States ; (2) the provisions relating to the number of chambers in a provincial legislature or the size and composition of either of the chambers or the method of choosing, or the qualifications of the members ; and (3) electoral qualifications, with special reference to the substitution of literacy for any higher educational qualifications originally prescribed in the Orders in Council, for women.

Amendments cannot be made in respect of the above subjects (except in the case of women's electoral qualifications), until ten years after the introduction of provincial autonomy or the federation as the case may be, but the King in Council may take action to make amendments at any time without the presentation of an address to the Crown, provided that, unless the amendment is of a minor or drafting character, the Secretary of State shall first ascertain the views of the Governors and legislatures in India to be affected by the amendment, and especially of minorities which may be concerned, and also provided that the provisions of the original Act governing the representation of Indian States may not

be amended without the consent of the ruler of any State which may be affected. The Secretary of State must lay before Parliament the draft of any Order in Council which he proposes to recommend and no further proceedings may be taken with regard to the Order except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Order may be made either in the form of the draft or with such amendments as may have been agreed to by resolutions of both Houses.

Fundamental Rights.—The Indian constitution contains no declaration of fundamental rights. Such a declaration was opposed by the Simon Commission the views of which were expressed in these words :—" We are aware that such provisions have been inserted in many constitutions, notably in those of the European States formed after the War. Experience however has not shown them to be of any great practical value. Abstract declarations are useless, unless there exist the will and the means to make them effective." Quoting these words with approval the Joint Committee added, "a cynic might indeed find plausible arguments, in the history during the last ten years of more than one country, for asserting that the most effective method of ensuring the destruction of a fundamental right is to include a declaration of its existence in a constitutional instrument." The committee found practical arguments against the proposal, strongly pressed in some quarters before the constitution was drafted, that the Act should contain such a declaration. They thought that a declaration of rights is of so abstract a nature that it has no legal effect of any kind or the legal effect would be such as to impose an embarrassing restriction on the powers of the legislature and to create a grave risk that a large number of laws might be declared invalid by the courts because of inconsistency with one or other of the rights declared. Moreover the States made it clear that no declaration of fundamental rights would apply in State territories.

Rights of Office and Property.—The constitution, however, does include one or two legal principles of a general nature equivalent to fundamental rights. One is that no subject of the King domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India or be

prohibited on any such grounds from acquiring, holding, or disposing of property or carrying on of any occupation, trade, business, or profession in British India. The other is that no person shall be deprived of his property in British India save by authority of law. With regard to the latter, as indicated above, certain particular provisions were included in the Act with respect to land tenure.

Restrictions on Internal Trade.—The constitution also contains a prohibition of certain restrictions on internal trade. It is provided that no provincial legislature or government, by virtue of the entry in the provincial list of subjects relating to trade and commerce within a province or the entry in that list relating to the production, supply and distribution of commodities, shall have power to pass any law or take any executive action prohibiting or restricting the entry into or export from the province of goods of any class or description ; or, by virtue of any power contained in the constitution Act, have power to impose any tax, cess, toll or duty or due which, as between goods manufactured or produced in the province and similar goods not so manufactured or produced, discriminates in favour of the former or which in the case of goods manufactured or produced outside the province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality. Any law passed in contravention of this provision is declared to be invalid to the extent of the contravention.

4. THE STRUCTURE OF GOVERNMENT

Common Principles.—The foregoing general analysis of the more important constitutional provisions of the Government of India Act 1935 has to be supplemented by a more detailed description of the structure of government. It is unnecessary to describe the federal and provincial systems separately, as some principles are common to both. The Governor-General and Governors are both appointed in the same manner and exercise authority in the name of the Crown. The constitutional provisions regarding ministerial appointment, members of the legislatures (except States members) in respect to privileges, qualifications, and payment are also similar, as are the principles governing legislative procedure, both general and financial, the organisation of

the houses, and the passing of bills, including assent and reservation. Similar provisions apply also in respect to the appointment of advocates-general.

The Federation.—The Federation of India consists of the following units :—(1) Governor's Provinces, (2) Chief Commissioner's Provinces and (3) Indian States which have acceded to the federation. The original condition of federation is that the rulers of States shall have acceded to the federation in sufficient number to be entitled to choose not less than fifty-two members of the Council of State and that the aggregate population of the States acceding amounts to at least one half of the total population of the States.

Instruments of Accession.—An Indian State is deemed to have acceded to the federation provided the Crown has accepted an "Instrument of Accession" executed by the ruler of the state whereby the ruler, for himself, his heirs, and successors, declares that he accedes to the federation as established under the Constitution Act, with the intent that, subject to the terms of his instrument of accession, the federal executive, the federal legislature, the federal court and any other federal authority shall exercise in relation to his State such functions as may be vested in them by the Act. The ruler must also assume the obligation of ensuring that due effect is given within his State to the provisions of the Constitution Act in so far as they are applicable by virtue of his instrument of accession. An instrument of accession must specify the matters which the ruler accepts as matters with respect to which the federal legislature may make laws for his State, and the limitations to which the power of the federal legislature and the extent of the executive authority of the federation are to be subjected. Further provisions are included regarding supplementary instruments of accession, the provisions of the Constitution Act which may be amended without affecting the accession of a State and the conditions of accession after the federation is established.

Governor's Provinces.—The Governor's provinces in the federation consist of the same provinces as existed under the dyarchy with the addition of two new provinces, Orissa and Sind, which were created from parts of the other provinces to complete the federation. New provinces can be created by Order in Council after consultation between the federal executive and legislature and the authorities of the provinces

concerned. The boundaries of provinces can similarly be varied. Berar, although under the sovereignty of the Nizam of Hyderabad, is administered as one province with the Central Provinces.

Chief Commissioner's Provinces.—The Chief Commissioner's provinces are six in number, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands and the area of Panth Piploda. Other Chief Commissioners' provinces may be created under the Act. Before the new constitution was introduced, Aden, which, for administrative purposes, used to be attached to Bombay presidency, was separated from India ; it is now under the Colonial Office.

The Crown.—The underlying principle of the constitution is that all powers appertaining or incidental to the Government of India and all rights, authority and jurisdiction possessed therein, are vested in the Crown and are exercisable by and in the name of the King Emperor. The authority and suzerainty of the Crown which before 1858 were exercised by the East India Company and after that date were vested in and exercised by the Secretary of State, the Governor-General in Council and Governors in Council are, by the constitution Act of 1935, resumed by the Crown and are exercised by the Crown through his representatives, namely the Governor-General in relation to the federation, the Representative of the Crown in relation to the Indian States, and Governors with relation to the provinces.

Governor-General and Crown Representative.—The Governor-General exercises two distinct functions, as Governor-General and Crown Representative. As Governor-General he is appointed by a Commission under the Royal Sign Manual, and exercises all such powers and duties as are conferred on him under the Constitution Act, and such other powers of the Crown, not being powers connected with the exercise of the functions of the Crown in its relation with Indian States, as the Crown may assign to him. As Crown Representative he is appointed in a like manner and has such powers and duties in connection with the exercise of those functions, not being powers or duties conferred on him under the Act as Governor-General, as the Crown may assign to him. As Governor-General he is head of the federation, and exercises power in the name of the Crown either directly

or through officers subordinate to him in all matters bearing on the federation, but in respect to the States his authority as Governor-General is limited by the conditions of the Rulers' instruments of accession. In matters outside the instruments of accession, he functions as Crown Representative. Two persons may be appointed to discharge these functions, but the Act specifically declares it lawful to appoint one person to fill both the offices. The salary and allowances of the Governor-General, and of provincial Governors are prescribed in the Act, supplemented by Orders-in-Council.

Ministers and Counsellors.—The administration of federal affairs is conducted in a dual manner. First, there is a council of ministers, not exceeding ten in number, to aid and advise the Governor-General except in respect to those matters in relation to which he is required to discharge his functions in his discretion. The ministers are chosen by the Governor-General and hold office during his pleasure. A minister who for six consecutive months is not a member of either chamber of the federal legislature must at the end of that period cease to be a minister. The salaries of ministers are determined by the federal legislature but the salaries may not be varied during a minister's term of office. No court may enquire into the advice given by a minister. In cases of dispute as to whether a matter falls within the Governor-General's discretionary or individual judgment power the Governor-General has power of final decision. Second, the Governor-General controls the administration of defence, ecclesiastical affairs, external affairs and tribal areas. To assist him in these functions he may appoint counsellors, not exceeding three in number, whose salaries and conditions of service are prescribed by the King in Council. In respect to these matters the Governor-General's responsibility is to the Secretary of State and not to the legislature.

Financial Adviser and Advocate-General.—The Governor-General, who has a special responsibility for the financial stability of India, is empowered to appoint a financial adviser. This official may also give advice to the federal government upon any financial matter upon which he is consulted. The Governor-General's financial adviser holds office during the pleasure of the Governor-General and his salary and allowances are such as the Governor-General in his discretion may

determine. The Governor-General must appoint an advocate-general for the federation, who must be a person qualified to be appointed a judge of the Federal Court. The advocate-general advises the federal government upon such legal matters and performs such other duties of a legal nature as may be referred or assigned to him by the Governor-General. The advocate-general for the federation is given the right of audience in all courts in British India, and, in cases in which federal interests are concerned, in all courts in the federated States. He holds office during the pleasure of the Governor-General and his pay is at such rate as the Governor-General in his individual judgment may determine.

Dyarchy.—The federal executive is thus dyarchical in character; on the one side there is the Governor-General acting with his ministers; on the other, the Governor-General advised by his counsellors. On the ministerial or transferred side, the government is of a parliamentary or responsible character; on the reserved side, it is non-responsible. In respect to the latter branch, the Governor-General is under the superintendence of the Secretary of State.

The Federal Legislature: Council of State.—The federal legislature consists of the King, represented by the Governor-General, and two chambers, the Council of State and the House of Assembly or Federal Assembly. The Council of State, or upper house, is a permanent body, not subject to dissolution. As near as may be, one-third of the members retire every third year. It consists of 156 representatives of British India, and not more than 104 representatives of the States, a maximum of 260 members in all. The actual number depends on the number of States which accede to the federation.

Election to the Council of State.—As already pointed out, election to the Council of State is direct, with the exception of six members to be nominated by the Governor-General in his discretion. Seats in British India are allotted to provinces, chief commissioners' provinces, to communities and women in the provinces; for example, Bengal has 20 seats of which 8 are for the General community, 10 for Muhammadans, 1 for scheduled castes and 1 for women; the Punjab has 16 seats of which 3, 4, 8 and 1 are respectively for the General community, Sikhs, Muslims and women. There are several non-provincial seats, e.g. for Europeans, Anglo-Indians and

Indian Christians, filled by electoral colleges composed of members of the same communities in the Legislative Councils or Legislative Assemblies of the Governor's provinces. Scheduled caste seats are filled by the scheduled caste members of the provincial legislatures. Women's seats are also filled by the provincial legislatures : both men and women may vote. Other seats (except in Baluchistan) are filled by election in communal territorial constituencies. Members are elected normally for nine years. Special interests, such as landholding, commerce and industry and labour are not represented as such in the Council of State. The seats of the States in the Council of State are allocated according to dynastic status, salutes and other factors. The smaller States are grouped and may send representatives jointly or in rotation. The States' representatives are appointed by the Rulers of the States, for a maximum period of five years.

The Federal Assembly.—The Federal Assembly consists of 250 representatives of British India and 125 representatives of the Indian States, 375 members in all. As in the Council of State, the seats are distributed between the provinces and between communities and interests in the provinces. The communities and interests represented are General (non-Muhammadan), a proportion of the seats of which in most provinces is reserved for the scheduled castes, Sikhs (Punjab only), Muslims, Europeans, Anglo-Indians, Indian Christians, commerce and industry, landholders, labour and women. The election of the British India members is indirect. The Hindu, Sikh and Muhammadan members of the Provincial Assemblies elect the members representing their communities by means of the single transferable vote. For the scheduled castes, there is a primary electorate of all who were successful candidates at the primary elections at the last provincial general election ; this electorate elects a panel of four candidates for each reserved seat, and the persons in the panel receiving most votes at the final election win the seat. Electoral colleges composed of the members of the community concerned in the Provincial Assemblies elect the European, Anglo-Indian and Indian Christian members ; the seats for women also are filled by the women members of the provincial Assemblies. Seats for commerce and industry are filled by chambers of commerce and similar bodies, labour seats by labour organisations and landholders by landholders' consti-

tuencies. There are four non-provincial seats filled by the Associated Chamber of Commerce, mainly a European body, the Federated Chamber of Commerce, Indian in composition, commercial bodies in Northern India, and labour organisations. The seats of the States are distributed mainly on a population basis.

Organisation, etc. of Chambers.—The Chambers of the federal legislature must be summoned to meet at least once in every year and not more than twelve months may intervene between one session and another. The Governor-General in his discretion may summon the chambers or either of them to meet at such time and place as he thinks fit ; he may also prorogue them and dissolve the Federal Assembly. In his discretion the Governor-General may address either chamber or both chambers assembled together. He may also in his discretion send messages to either chamber. Every minister, counsellor and the advocate-general has the right to speak in and otherwise take part in the proceedings of either chamber, or in joint sittings, and in committees of which they may be named a member ; but they have not the right to vote. The Council of State and the Federal Assembly elect a president and deputy president, speaker and deputy speaker respectively, whose salaries are determined by their chambers. These officers of the chambers may resign or be removed from their office by a resolution passed by a majority of all the members of the chamber ; if they cease to be members of the chambers they automatically vacate office. All questions at any sitting or joint sitting of the chambers are determined by a majority of the votes of the members present and voting. The president or speaker does not vote in the first instance but may exercise a casting vote. If less than one-sixth of the total number of members of either chamber are present, the president or speaker must adjourn the chamber or suspend the meeting until the requisite number is present.

Privileges of Members.—Members enjoy freedom of speech in the legislature ; no member is liable to any proceedings in any court in respect of anything said or any vote given by him in the legislature or in any committee. No person is liable in respect of the publication by either chamber of the legislature of any report, paper, votes or proceedings. In other respects the privileges of the members in the previous legislatures are continued. Each chamber has control over

its proceedings but it is provided that neither of them is a court or has punitive power other than that of removing and excluding persons infringing the rules of standing orders or otherwise behaving in a disorderly manner. The Governor-General in his individual judgment is empowered to make rules to safeguard confidential matters from disclosure. Members may be paid such salaries and allowances as the legislature may fix.

Proceedings in English.—All proceedings in the federal legislature are conducted in the English language but the rules of procedure of each chamber and the rules regarding joint sittings must make provision for persons unacquainted or not sufficiently acquainted with English to use another language.

Qualifications of Members.—The general qualifications and disqualifications of members are practically the same for all legislative bodies in the federation and the provinces. To be qualified to fill a seat, a person must be a British subject, or the ruler or subject of an Indian State which has acceded to the federation, or, in the case of the provinces, the ruler or a subject of any prescribed Indian State ; he must be not less than thirty years of age to be a member of an upper house, and not less than twenty-five for a lower. He must also possess the specific qualifications appropriate to his case, i.e. his name must be included in an electoral roll or, in the case of indirect election, he must be a member of the electoral body. Every member must take an oath or affirmation before he takes his seat. Members may vacate their seats in writing to the Governor-General or Governor, and seats automatically become vacant if a member becomes subject to certain disqualifications. If a member is absent from meetings for sixty days without permission, a chamber may declare his seat vacant. The disqualifications for membership are (1) holding an office of profit under the Crown in India, unless the office is exempted by an act of the legislature concerned. Ministers are exempted from this provision, as, for the federation, are members of the services of the Crown serving an Indian State. This provision, in effect, means that no one in British India who draws emoluments from government, except ministers, may be a member. Under the previous constitution many persons partially supported by income from government were members, such as government pleaders and public prosecutors. The Act permits of

their being elected for the first elections only. Under-ministers, such as parliamentary secretaries, if paid by government, would be disqualified unless specially exempted by law. The underlying principle is unexceptionable ; it is that no one, save ministers, who obtain money from government should be able to influence legislation ; (2) insanity, (3) undischarged bankruptcy, (4) conviction by a court or election tribunal for certain election offences, (5) conviction for an offence punishable by transportation or imprisonment of not less than two years, unless five years have elapsed since release, and (6) failure to return electoral expenses. If a disqualified person sits and votes he is liable to a penalty of Rs. 500 a day recoverable as a debt to the federation or province.

Procedure.—Each chamber makes its own rules of procedure but the Governor-General in his discretion, after consulting the president or the speaker as the case may be, makes rules—(1) to regulate the procedure of and the conduct of business in the chambers in relation to functions which he discharges in his discretion or in his individual judgment, (2) to secure the timely completion of financial business, (3) to prohibit discussion of and asking questions on any matter connected with an Indian State other than a matter with respect to which the federal legislature has power to make laws for that State, and (4) to prohibit, except with the consent of the Governor-General in his discretion, the discussion of and asking of questions on any matter connected with the relations between His Majesty or the Governor-General and any foreign state or prince, the discussion of, except in relation to estimates of expenditure, or the asking of questions on any matter connected with tribal areas or the administration of any excluded area, the discussion of or the asking of questions on any action taken in his discretion by the Governor-General in relation to the affairs of a province, or on the personal conduct of the Ruler or a Ruler's family of any Indian State. The Governor-General is also empowered after consultation with the president and the speaker to make rules for joint sittings and communications between the two chambers. If the Governor-General considers that the discussion of any bill or amendment would affect the discharge of his responsibility for the prevention of any grave menace to the peace of India, he may stop the proceedings. No discussion is permitted on the conduct

of a judge of the Federal Court, or any High Court, or a State court.

Course of Legislation.—A bill normally requires the assent of both chambers before it becomes law. Except in the case of financial bills, bills may originate in either chamber. Dissolution of the Assembly causes the lapse of any bill passed in it if that bill is pending in the Council of State; but such dissolution does not affect a bill of the Council of State. If a bill is passed by one chamber and rejected by the other or if the chambers disagree regarding amendments to bills or if a bill is not presented for assent within six months, exclusive of any period of prorogation or adjournment, after its reception by the other chamber, the Governor-General may call a joint sitting of the chambers. In his discretion he may summon a joint sitting if the measure relates to finance or affects his discretionary or individual functions, without waiting for rejection or disagreement or the expiry of the six months period. A joint sitting normally takes place in the next session of the legislature but the Governor-General in his discretion may convene it in the same session. The president of the Council of State normally presides at joint sittings. Joint sessions are not affected by the dissolution of the Assembly. Questions at joint sessions are determined by a majority of the members voting.

When a bill has been passed by the chambers it must be transmitted forthwith to the Governor-General for assent or reservation in his discretion. He may assent to the bill or reserve it for consideration in whole or in part; he may also suggest amendments which must be taken into consideration at once. If the Governor-General does not notify the Royal assent or dissent within twelve months a reserved bill automatically lapses. A Bill may be disallowed within twelve months from assent; the Governor-General must thereupon notify the disallowance and the measure becomes void from the date of such notification.

Questions, Resolutions, etc.—The members of the chambers may ask questions and supplementary questions on public matters and on matters falling within their legislative competence. They may also move resolutions on similar subjects. They may move motions for adjournment if they desire to invite the attention of the executive to a matter of urgent public interest.

Financial Procedure.—In respect of financial matters the Governor-General must cause to be laid before both chambers of the federal legislature in respect of every financial year a statement of the estimated receipts and expenditure of the federation for the year ; this is known as the Annual Financial Statement. In this statement the non-votable sums, charged on the revenues of the federation, and the votable sums, i.e. other expenditure to be met from the revenues of the federation must be shown separately. Expenditure on revenue account must be distinguished from other expenditure. Also expenditure necessary for the discharge of the special responsibility of the Governor-General has to be shown.

Non-Votable Expenditure.—The non-votable expenditure, i.e. expenditure charged on the revenues of the federation, consists of nine items :—(1) the salary and allowances of the Governor-General, (2) debt charges, interest, sinking fund, etc., (3) salaries and allowances of ministers, counsellors, the financial adviser and his staff, the advocate-general and chief commissioners, (4) salaries, allowances and pensions of judges of the Federal Court and pensions of judges of High Courts, (5) expenditure on defence, ecclesiastical affairs, external affairs, administration of tribal areas and other territories, (6) sums payable in respect of expenses incurred in discharging functions of the Crown in its relation to Indian States, (7) grants for excluded areas in provinces, (8) any sums required to meet decrees or judicial awards, and (9) other expenditure declared in the Constitution Act to be borne on the revenues of the federation.

Voted Expenditure.—All other expenditure is votable and has to be submitted in the form of demands for grants recommended by the Governor-General. The government alone may propose expenditure or an increase in expenditure or taxation. Either chamber may refuse or reduce a grant but the financial proposals are submitted to the Assembly first. If the Assembly refuses or reduces a grant, then the Governor-General may direct that the original grant or a lesser amount be submitted to the Council of State ; otherwise the demand is abandoned or the diminished sum is asked from the Council of State. A joint sitting may be called to decide cases of disagreement.

Authenticated Schedule.—When the demands have been passed, the Governor-General authenticates a schedule speci-

fying the grants made by the chambers ; to this he may add sums demanded by the government but refused or reduced by the chamber which he considers necessary for the discharge of his special responsibilities and also the amounts charged on the revenues of the federation. The authenticated schedule is placed before the chambers but is not discussed. It is the sole authority for expenditure during the coming year. Supplementary statements may be submitted to the chambers when necessary. Supplementary budgets are subject to the same procedure as the main budget.

A bill or amendment making provision for the imposition or increase of any tax or for regulating the borrowing of money or the giving of any guarantee by the federal government or for amending the law with respect to any financial obligations undertaken by the federal government or for declaring any expenditure to be expenditure charged on the revenues of the federation, i.e. (to be non-votable) or for increasing such expenditure, may not be introduced except on the recommendation of the Governor-General ; no such bill may be introduced in the Council of State.

Division of Powers : Legislative Lists.—The federal legislature may make laws for the whole or any part of British India and for any federated State, and a provincial legislature may make laws for the province or any part of it. This constitutional provision is supplemented by another to the effect that the federal legislature has, and a provincial legislature has not the power to make laws with respect to matters enumerated in the federal list of subjects ; that the federal and provincial legislatures have power to make laws on subjects contained in a concurrent legislative list, and that the provincial legislatures have, and the federal legislature has not power to make laws with respect to the subjects in the provincial list. The federal legislature is empowered to make laws with respect to matters enumerated in the provincial legislative list except for a province or any part thereof. The federal legislative list contains fifty-nine subjects. All are matters which affect the whole of India, and most of them are subjects which are undertaken by every federal government. The most important subjects are the naval, military and air forces, external affairs, currency, coinage, federal public debt, posts and telegraphs, federal railways, maritime shipping and navigation, copyright, banking, customs,

migration, and federal sources of revenue. The provincial legislative list contains fifty-four subjects, such as public order, police, prisons, provincial debt, local government, public health, education, agriculture, forests, unemployment, land revenue and various classes of provincial taxes. The concurrent list contains thirty-six subjects divided into two parts, twenty-five in Part I and eleven in Part II. Criminal law and procedure, civil procedure, evidence and oaths, marriage, divorce, stamp duties, newspapers, books and printing presses are the most important subjects in Part I, factories, welfare of labour, unemployment insurance, electricity, Indian shipping and navigation in Part II. In regard to the States the federation may legislate only on those matters accepted by the Rulers of the States in their instruments of accession. A State may legislate on the same subject but such legislation is void if it is inconsistent with a federal act.

Residual Powers.—With regard to residual powers the Governor-General may empower either the federal or a provincial legislature to enact a law on any matter not enumerated in any of the legislative lists, including a law imposing a tax not mentioned in these lists. The executive authority of the federation or of a province as the case may be, extends to the administration of any such law unless the Governor-General otherwise directs. The federal legislature may legislate for two or more provinces on any subject in the provincial legislative list at the request of the provinces. Any such act may be amended or repealed by a provincial legislature.

Other Powers.—The federal legislature may apply the Naval Discipline Act to the Indian naval forces with such modifications as may be necessary. The federal legislature has not power to make law for any province so as to give effect to international agreements save with the previous consent of the Governor or in the case of a federated State, the Ruler.

Executive Authority of Federation in Provinces and States.—The executive authority of every province and federated State must be so exercised as to secure respect for the laws of the federal legislature. The Governor-General is empowered also to require Governors to discharge certain executive federal functions as his agents. With the consent

of a Governor or a Ruler of a federated State he may entrust either conditionally or unconditionally to that Governor or Ruler, or their officers, functions in relation to any matter to which the executive authority of the federation extends. An act of the federal legislature also, notwithstanding that it relates to a matter with respect to which a provincial legislature has no power to make laws, may confer power to impose duties upon a province, or the officers and authorities in it, or upon a State, or such of its officers and authorities as may be designated for the purpose by the Ruler. Where such duties are imposed the federation must pay the cost, and disputes may be decided by an arbitrator appointed by the Chief Justice of India. The executive authority of every province must be so exercised as not to impede or prejudice the executive authority of the federation, and if necessary, the federation may give directions accordingly. The executive of the federation may also give directions to provinces regarding communications of military importance, and may direct them to use their executive authority to prevent menace to the peace and tranquillity of India. The Act confers special powers in respect of broadcasting. The provinces and the States are entitled to reasonable facilities for transmission. Special powers are also conferred on the Governor-General in respect to interference with water-supply. An inter-provincial council may be appointed by the King in Council to deal with inter-provincial disputes and also to discuss matters of common provincial interest. Such an Order may make provision for Indian States participating in the work of the council.

Federal Finance.—The subject of federal and provincial finance belongs more appropriately to the sphere of Economics studies; only the barest outlines can be given here. In the years immediately preceding the enactment of the new constitution, the finances of both the central and provincial governments were in an unsatisfactory state. Revenue had declined all over India, and, while retrenchment had been effected, expenditure had reached a level beyond which it could not safely go. The new constitution was likely to affect the financial position of the central government in several ways. First, it would lose certain revenues from Burma; second, the estimated additional cost of federation would amount to a crore and a half of rupees; and third,

subventions would be necessary for certain deficit provinces. Financial stability was a fundamental pre-requisite of the new system, and Sir Otto Niemeyer was appointed in 1935-6 to conduct an enquiry. He not only reported favourably on the general financial condition, but also made recommendations which formed the basis of an Order in Council which was issued to supplement the financial provisions of the Act.

Sources of Federal Revenue.—The sources of the federal and provincial revenues are given in the Act; details, some of a very important character, are given in the Order. The taxes which are leviable by the federation are (1) customs, including export duties, (2) federal excise duties, (3) corporation tax, (4) salt duties, (5) income-tax (except on agricultural income), (6) taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies, and taxes on the capital of companies, (7) dues in respect to succession to property other than agricultural land, (8) stamp duties in relation to bills of exchange, promissory notes, bills of lading, letters of credit, insurance policies, proxies and receipts, (9) terminal taxes (railway or air) and taxes on railway fares and freights, and (10) fees in respect of any federal-subject except fees taken in any court. A proportion of the income-tax—fixed at fifty per cent—is payable to the provinces and States in which the tax is leviable; but the federation may retain the proceeds of any surcharge. The federation also may retain the income-tax for the first five years and for another period of five years, until their share, with railway receipts, reaches a prescribed figure. When the income-tax does become divisible, statutory percentages are prescribed for the provinces—e.g. Bombay and Bengal 20 per cent, and Orissa and Sind 2 per cent each. The corporation tax cannot be levied in a State till ten years after federation, and a Ruler may claim to pay an equivalent contribution instead of levying the tax. The whole of the salt, federal excise and export duties may be distributed to the provinces or States. In the case of the jute export duty, 62½ per cent of the net proceeds are assigned to the jute growing provinces. The previous consent of the Governor-General is required to a bill proposing to vary a tax or duty in which a province is interested.

Subventions to Provinces.—The federal (or central) revenues are charged with certain subventions to Provinces

—25 lakhs a year to the United Provinces for five years, 30 lakhs a year to Assam, 100 lakhs a year to the North-West Frontier Province, 47 lakhs in the first year, 43 lakhs in the four succeeding years, and thereafter 40 lakhs a year to Orissa, and 100 lakhs in the first year to Sind, decreasing gradually to 55 lakhs a year.

Sources of Provincial Revenue.—The provincial legislative financial heads are (1) land revenue, (2) provincial excise duties, (3) taxes on agricultural income, (4) taxes on lands, buildings, hearths and windows, (5) succession duties in respect of agricultural lands, (6) taxes on mineral rights, (7) capitation taxes, (8) taxes on professions, trades, callings and employments, (9) taxation on animals and boats, (10) taxation on the sale of goods and advertisements, (11) cesses on the entry of goods into a local area for consumption, use or sale, (12) taxes on luxuries, (13) stamp duties arising from provincial subjects, (14) dues on passengers and goods carried in inland waterways, (15) tolls, and (16) fees arising from the administration of any provincial subject, but not fees taken in any court.

Financial Relations with States.—Under the pre-federation system the central government received certain tributes from the States. On the introduction of the federation this will be changed. The federation is to receive all payments due from the States and provide the Representative of the Crown with the sums required for the purpose of his duties. With regard to acceding States the Crown may remit for a period not exceeding twenty years cash contributions payable and may pay to any state such sum as is deemed fit if the State in the past has ceded territory in lieu of services to be rendered by it. Neither payment nor remission may begin until the provinces have begun to receive payments from the federal income-tax receipts. The financial particulars as between the States and the federation are determined in the instruments of accession.

Provincial Governors.—As in the federation, the executive authority in the provinces is vested in the King and exercised by the Governor as his representative. Governors are appointed by a Commission under the Royal Sign Manual, and their pay and allowances are prescribed in the Act and by Order-in-Council. In respect to their discretionary functions, Governors are under the superintendence of the

Governor-General, but in all other matters they exercise their functions according to the canons of parliamentary or responsible government.

Ministers.—In each province there is a council of ministers, or cabinet, to advise and aid the Governor in the discharge of his functions, except those exercised in his discretion, when he may or may not seek ministerial advice. In his discretion, a Governor may preside at cabinet meetings. He is empowered to decide whether a particular matter comes within the scope of his discretionary or individual judgment powers. As in the federation, a minister who is not a member of the legislature must be elected within six months; otherwise the tenure of his office automatically expires. The salaries of ministers are determined by the legislature but cannot be varied during their term of office. No court can enquire as to the advice tendered by the ministers to the Governor. The functions of the Governor in respect to the choosing, summoning and dismissal of ministers are exercised by him in his discretion.

Each Governor must appoint an advocate-general who must be a person qualified to be a judge of a High Court and the Governor exercising his individual judgment may fix his terms of office. The duties of advocates-general are parallel to those of the federal advocate-general.

Rules of Business.—With regard to the executive business of provincial governments, each Governor must make rules for the transaction of business and for the allocation among ministers of the business in so far as it is not business with respect to which he has to act in his discretion. The rules of business must include provisions requiring ministers and secretaries to government to transmit to the Governor all such information with respect to the business of the provincial government as may be specified in the rules, or as the Governor may otherwise require to be transmitted, and in particular requiring a minister to bring to the notice of the Governor and the appropriate secretary to bring to the notice of the minister concerned and of the Governor any matter in consideration by him which involves or appears likely to involve any special responsibility of the Governor. Provincial Governors make such rules of business in their discretion after consultation with their ministers.

Provincial Legislatures.—As already indicated, in six pro-

vinces, Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, the legislatures are bicameral ; in the others the unicameral system prevails. The names of the chambers are, where there is one chamber, Legislative Assembly, and where there are two chambers, Legislative Council, or upper house, and the Legislative Assembly, or lower house. Under the dyarchy the chambers were known as Legislative Councils. The new names were introduced in the Government of India Act 1935 to bring the Indian system into line with that of most of the Dominions.

Legislative Councils.—The composition of the Legislative Councils varies from province to province. In size they are all much smaller than the lower houses. The largest maximum number is 65 in Bengal, the lowest 22 in Assam. The seats are also allocated on different principles although communal representation prevails in each case. In Bengal and Bihar a quota of the seats is filled by indirect election with the single transferable vote from the Legislative Assembly. The other seats are filled by direct election from territorial constituencies. In all provinces except Madras, where three seats are allotted to Indian Christians, the communities represented in the territorial constituencies are the General community, Muhammadans and Europeans. In each province a number of seats may be filled by nomination by the Governor. As already indicated these seats are meant for minor communities, women and the scheduled castes.

Legislative Assemblies.—The composition of Provincial Legislative Assemblies varies from province to province according to population. The largest Legislative Assembly is that of Bengal, with 250 members ; the United Provinces has 228 ; Madras 215 ; Bombay and the Punjab 175 each, Bihar 152, the Central Provinces 112, Assam 108, the North-West Frontier province 50, Orissa and Sind 60 each. The seats are divided among communities, special interests and women according to population and other factors. In Bengal for example, 78 seats are allotted to the General community ; of these, 30 are reserved for the scheduled castes ; 117 are allotted to Muhammadans, 3 to Anglo-Indians, 11 to Europeans, 2 to Indian Christians, 19 to commerce, industry, mining and planting, 5 to landlords, 2 to universities, 8 to labour and 5 to women of which 2 are for the General community, 2 for Muslims and 1 for Anglo-Indians. In some provinces, e.g. Madras,

Bombay, Bihar, Assam, the Central Provinces and Orissa, special seats are allotted to representatives of backward areas and tribes. Thirty-one seats in the Punjab and three in the North-West Frontier Province are allotted to Sikhs. In all provinces except the North-West Frontier Province seats are set aside for labour ; university seats are allotted only where there are provincial universities. Landholders' seats are allotted in all provinces except Assam, and seats for representatives of commerce, industry and mining in all the provinces except the North-West Frontier Province.

Provincial Legislative Councils are permanent bodies, one-third of the members retiring every third year. The Provincial Assemblies, like the Federal Assembly, have a maximum life of five years. The constitutional provisions governing sessions of the provincial legislatures, the rights of Governors to address and send messages to them, the rights of ministers and advocates-general to take part in the proceedings of both chambers, officers of chambers, voting, members of the chambers, including privileges, qualifications, salaries and allowances, and procedure, *mutatis mutandis* are similar to those governing the federal legislature. In unicameral provinces, of course, bills have to be passed by one chamber only.

The Franchise.—The qualifications for the franchise, which are so extensive and so complex that they do not admit of examination here, are prescribed in the first, fifth and sixth schedules to the Act, and in the provincial Councils and Assemblies Orders-in-Council. Certain franchises are common to all India, but each set of provincial franchises is prescribed separately. The governing principle for the franchise was uniformity not of qualification but of number. Under the dyarchy only a small percentage (about two or three per cent) of the population was enfranchised, under the constitution of 1935 the percentage was increased to about fourteen or fifteen ; qualifications had to be devised to secure this number. Further, ten per cent of the scheduled castes had to be enfranchised, and every effort was made to secure a large female electorate. In Bengal, the electorate at the last election under the dyarchy was about 1,300,000 including 42,000 women : at the first elections under provincial autonomy it was nearly 6,700,000 including 970,000 women. The qualifications for upper houses were designed to create a small

electorate of men and women of substance, education and public service.

Constituencies are divided into two classes—territorial, and non-territorial or special. The non-territorial constituencies cover special interests, such as commerce and industry, labour, landholders and universities. The franchise in these cases is determined by membership of chambers of commerce, the holding of land involving payment of land revenue of a prescribed standard, being manual workers in factories, membership of certain trade unions, and being fellows or registered graduates of universities. The details vary from province to province. In territorial constituencies the qualifications are determined on residence and payment of municipal rates, or fees, payment of union board or chaukidari union rates, road and public works cesses, motor vehicle taxes, in some cases rent of houses or for land, and assessment to income tax. In rural Bengal the lowest payment of union board rate—six annas a year—is adopted as the standard ; in Calcutta the payment of any rate or fee is sufficient qualification. Throughout India the property qualifications for the Assembly are practically the lowest that can be prescribed. In addition, educational qualifications varying from passing the matriculation (in Bengal) to literacy are prescribed. In some cases persons are not qualified on this basis unless they apply for enrolment in the electoral roll. Service in His Majesty's regular forces is also a qualification, if the person concerned is a retired, pensioned or discharged non-commissioned officer or soldier. Special qualifications were prescribed to secure a large electorate of women. The chief of these was being a wife or widow of a man qualified to be an elector under the Government of India Act 1919. Wives and widows of men with service qualifications are also enfranchised. Literacy in some cases is also prescribed for women. In some provinces special differential franchises had to be devised for the scheduled castes to secure a sufficiency of electors.

The property qualifications for Legislative Councils are on a relatively high level ; the upper house franchises also include titles not lower than that of Rai Bahadur, Khan Bahadur, and their provincial equivalents, service pensions not less than Rs. 150 per mensem, and the holding of many public or official offices, such as membership of a legislature, vice-chancellorships and fellowships of universities, chairman

and deputy-chairmanship of local bodies, such as municipalities and district boards, judgeships of the Federal and High Courts, and chairmanship of co-operative organisations. Differential qualifications of various types are prescribed for women, Muhammadans (in Bengal) and Scheduled Castes.

Sex is no disqualification : women may vote in and be candidates for any constituency for which they have the requisite qualifications. The special women's constituencies were devised to ensure that women should have representation. In some of these constituencies (e.g. General, in Bengal) men and women both vote ; in others (e.g. Muhammadans in Bengal) only women may vote.

The details of the franchise, and also the systems of voting in the different provinces must be studied separately. As in most democratic countries, they are matters for experts, but in India, with its unique system of representation, they are much more complex and difficult than in other countries.

Chief Commissioner's Provinces.—Chief Commissioner's provinces are administered by the Governor-General, acting in his discretion through chief commissioners. The executive authority of the federation extends to them but in the case of British Baluchistan it is provided that the Governor-General acts in his discretion. No federal law applies to British Baluchistan unless the Governor-General directs such application with such modifications as he thinks fit. Subject to disallowance by the Crown, the Governor-General may make regulations for it which may supersede any other law. Similar provisions apply to the Andaman and Nicobar Islands. In Coorg the pre-federation machinery continues, till other arrangements are made. The rules applicable in Governor's provinces with regard to police organisation, crimes of violence and the secrecy of records apply to Chief Commissioner's provinces.

Governor-General's and Governor's Staff.—The Governor-General, and provincial Governors, have their own secretarial staff which is appointed by them in their discretion. The salaries and allowances, office accommodation and other facilities to be provided for the staff are such as may be determined by them in their discretion and the expenses are borne on the revenues of the federation or the provinces, as the case may be.

The Secretary of State in Council.—The Government

of India Act 1935 made a radical change in the character of the controlling authority of India in the government of Great Britain. Up to 1937 the Secretary of State for India was assisted by the Council of India, a statutory body composed mainly of persons who had long experience of India, which advised the Secretary of State and with him had certain functions of sanction and control. Until 1919 the salary of the Secretary of State and the expenditure of the India Office were paid from the Indian revenues, but the Act of 1919 transferred these to the British Exchequer. After 1919 while the superintendence and control of the Secretary of State was relaxed in respect to transferred subjects in the provinces, it continued for the reserved side of the provincial governments and also for the Government of India. In certain matters the Secretary of State was required to act with the concurrence of a majority of the Council. These were (*a*) grants or appropriations of any part of the revenues of India, (*b*) the making of contracts for the purpose of the 1919 Act and (*c*) the making of rules regulating matters connected with the Imperial services.

Secretary of State's Advisers.—The Government of India Act 1935 abolished the Council of India. In its place it created a body of advisers to the Secretary of State. These advisers may not be less than three or more than six in number. At least one half of them must be persons who have held office for at least ten years under the Crown in India and have not last ceased to perform official duties in India under the Crown more than two years before the date of their appointment. An adviser holds office for five years and is not eligible for reappointment. Advisers are paid at the statutory rate of £1,350 a year but a member of Indian domicile receives in addition a subsistence allowance of £600 a year. The advisers are debarred from being members of Parliament. Their salaries and the expenses of the Secretary of State's office are met from the British Exchequer and the official staff are placed on the same footing as members of the British civil service.

Functions of Advisers.—The Secretary of State at his discretion may or may not consult his advisers, and if he does so he may take their advice or not as he pleases, except in relation to certain specified matters connected with the services. In cases where by statute he has to act with their

concurrence, it is provided that such concurrence may only be the concurrence of one half of those present at a meeting.

Burma Advisers.—With the separation of Burma the Secretary of State became the Secretary of State for India and Burma and the Act provides that he shall have three persons to advise him on Burma matters one at least of whom must have served for at least ten years under the Crown in Burma. The conditions governing the Burma advisers are the same as those of the India advisers.

High Commissioner for India. —The office of High Commissioner for India created under the Act of 1919 was continued under the Act of 1935. The High Commissioner is appointed and his salary and conditions of service are prescribed by the Governor-General exercising his individual judgment. By statute he is required to perform on behalf of the federation such functions in connection with the business of the federation, in particular in relation to the making of contracts, as the Governor-General may from time to time direct. With the approval of the Governor-General and on such terms as may be agreed, the High Commissioner may undertake to perform on behalf of a province or a federated State or on behalf of Burma functions similar to those which he performs on behalf of the federation.

The High Commissioner is really the agent of the Government of India and the provincial governments in London. He is paid from Indian revenues and is responsible directly to the federal government. In addition to performing his statutory functions with regard to contracts, he advises and looks after the interests of Indian students studying in England. He also usually represents India at international conferences, e.g. International Labour Conferences. He obtains and supplies commercial information and promotes Indian commercial and trade interests in London. For the execution of these duties he has a large professional, technical and clerical staff.

The Constitution of Burma.—The Government of India Act, 1935, also contains the Constitution of Burma, which came into force on the same date as provincial autonomy in India. The Burma Constitution is similar to that of the Indian provinces, with the addition of the central elements requisite for a unitary form of government. Thus the Governor of Burma acts in his discretion with regard to defence,

ecclesiastical affairs, external relations, and monetary policy, and is given three counsellors to aid him. In other matters, the government is parliamentary. The Governor also appoints a financial adviser, and there is a Burma Railway Board. In discretionary and individual judgment functions the Governor is under the superintendence of the Secretary of State for Burma. The legislature is bicameral, with a Senate, which sits for seven years, and a House of Representatives, sitting for five. The Senate has 36 members, half are chosen by the Governor in his discretion, and half elected by the lower house. The House of Representatives has 132 members, elected in non-communal constituencies, by minorities, and by special interests. The Governor has special powers, equivalent to the "excluded area" powers in India in respect to certain areas, e.g. the Shan States for which also special financial provision is made.

The general provisions governing the powers of the Burmese legislature are similar to those prevailing in India. The same is true of the High Court and services. The Secretary of State is authorised to select officers for the Burma Civil Service (Class I), the Burma Police and the Burma Civil Medical Service. A Burma Frontier Service corresponds to the Political service in India.

The Act contains also some miscellaneous provisions governing the relations of India and Burma. The financial and customs settlement as between India and Burma and the conditions of Indo-Burmese migration, are determined by Orders in Council.

5. THE JUDICIARY

The Privy Council.—Prior to the introduction of the federation the apex of the judicial system in India was the Judicial Committee of the Privy Council. The new constitution did not affect the position of the Privy Council but it created a Federal Court the jurisdiction of which may be extended to the hearing of appeals from High Courts which otherwise would have gone before the Privy Council.

The Federal Court.—The Federal Court consists of the Chief Justice of India and such number of other judges as the Crown may deem necessary, but unless an address is presented by the federal legislature to the Governor-General praying for an increase, the number of judges may not exceed

six. Judges of the Federal Court are appointed by the Crown and may hold office up to sixty-five years of age. A judge may resign his appointment or may be removed on the recommendation of the Judicial Committee of the Privy Council on a reference being made to them by the Crown, on the ground of misbehaviour or infirmity.

Qualifications of Judges.—A judge of the Federal Court must have been at least five years a judge of a High Court in British India or a federated State, or a barrister of England or Northern Ireland or a member of the Faculty of Advocates in Scotland of at least ten years' standing, a pleader of a High Court in British India or in a federated State, or of two or more such courts in succession, of at least ten years' standing.

The Chief Justice must be or must have been when first appointed to judicial office, a barrister, a Scottish advocate or a pleader of at least fifteen years' standing.

The salaries of the judges of the Federal Court are determined by Order in Council, and the expenditure of the Court is borne on the revenues of the federation.

The Federal Court sits at Delhi or at such other places as the Chief Justice of India, with the approval of the Governor-General may determine. The proceedings are conducted in English.

Jurisdiction.—The Federal Court to the exclusion of any other court has original jurisdiction in any dispute between one or more of the following parties, viz., the federation, any of the provinces or any of the federated States, in so far as the dispute involves any question on which the existence or extent of a legal right depends. The original jurisdiction of the Federal Court with respect to the States extends only to a dispute concerning the interpretation of the Act or an Order in Council, or the executive authority vested in the federation by instruments of accession. Judgments of the Federal Court are only declaratory.

An appeal lies to the Federal Court from any judgment, decree or final order of a High Court in British India if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Act or an Order in Council. Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question has been wrongly decided.

In such cases direct appeal to the Privy Council is not permitted.

Power to Enlarge Jurisdiction.—With the previous sanction of the Governor-General in his discretion, the federal legislature may enlarge the appellate jurisdiction of the Federal Court. The Act must specify the civil cases in which an appeal may lie to the Court from a judgment of a High Court in British India without any certificate; but no appeal may lie unless the amount of the subject matter of the dispute in the court of first instance is not less than fifty thousand rupees and the Federal Court gives special leave to appeal. If the federal legislature makes such a provision a consequential provision may also be made by the same legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to the Privy Council either with or without special leave.

Jurisdiction in States.—The Federal Court has also appellate jurisdiction in appeals from High Courts in federated States on the ground that a question of law concerning the interpretation of the constitution Act or an Order in Council, or the extent of the legislative or executive authority vested in the federation by virtue of an instrument of accession or arising from an agreement made under the Act in relation to the administration of a state, has been wrongly decided.

Appeal to Privy Council.—An appeal lies to the Privy Council from any judgment of the Federal Court given in the exercise of its original jurisdiction which affects the interpretation of the Act, an Order in Council or the legislative or executive authority vested in the federation by instruments of accession or agreements in relation to the administration of States made under the Act. Such appeals do not require leave. Other appeals may be made by leave of the Federal Court or of the Privy Council itself.

High Courts.—The following courts are declared by the Act to be High Courts: the High Courts of Calcutta, Madras, Bombay, Allahabad, Lahore and Patna, the Chief Court in Oudh, the Judicial Commissioners' Courts of the Central Provinces and Berar, the North-West Frontier and Sind; other courts may be constituted as High Courts under the Act. Every High Court consists of a Chief Justice and such

other judges as the Crown may from time to time deem necessary, subject to a maximum prescribed in an Order. Judges are appointed by the Crown, and may resign or may be removed for misbehaviour or infirmity by the Crown on a report from the judicial Committee of the Privy Council.

Qualifications of Judges.—A judge of a High Court must be a barrister of England or Northern Ireland or a Scottish advocate of at least ten years' standing, or a member of the Indian Civil Service of at least ten years' standing who has for at least three years served as a district judge, or a pleader of a High Court or Courts of ten years' standing, or must have held a judicial office in British India not inferior to that of a subordinate judge or a judge of a small cause court for at least five years. The Chief Justice of a High Court must be, or must have been when first appointed a judge, a barrister, advocate or pleader or must have served for not less than three years as a judge of a High Court. Under the old constitution at least one-third of the High Court judges had to be barristers and one-third members of the Indian Civil Service. No Indian Civil Service judge could be appointed Chief Justice. All these restrictions are now removed.

Provision is made in the Act for the appointment of temporary and additional judges by the Governor-General. Temporary judges may not be appointed for more than two years. The salaries and allowances of judges are fixed by an Order in Council and the expenses of High Courts are borne on the revenues of the province. The proceedings must be conducted in English.

Jurisdiction.—The jurisdiction of the High Courts established under the Act is the same as it was under the old constitution. The High Courts of Calcutta, Bombay and Madras have both original and appellate jurisdiction; appeal lying from a judge on the original to a bench on the appellate side; most other High Courts have only appellate jurisdiction. Every High Court has power of superintendence over all courts in India subject to its appellate jurisdiction and is invested with the appropriate administrative functions. No High Court has original jurisdiction in any matter concerning the revenue or its collection so long as it is done according to the usage of the country or the law for the time being in force. The federal or a provincial legislature

may change this rule, but a bill making such provision may not be introduced without the previous sanction of the Governor-General or a Governor, in his discretion.

On presentation of an address to the Governor by a province, the Crown may constitute a High Court for that province, or any part of it, or reconstitute any existing High Court. On an agreement being reached between the governments concerned, the Crown may extend the jurisdiction of a High Court in a province to any area in British India not forming part of that province. If such jurisdiction is extended the High Court has the same jurisdiction in relation to that area as it has in its own province.

District Judicial Administration.—Provinces are divided into district and sessions divisions, approximately corresponding to administrative districts, for the administration of justice. Generally, but not invariably, one district and sessions judge is appointed for each division. These judges exercise appellate jurisdiction over the civil judiciary of the districts on the one side and the criminal judiciary or magistracy on the other. The courts of district and sessions judges have also the highest original jurisdiction on both the civil and criminal sides. Sessions judges may impose any punishment authorised by law, but death sentences are subject to confirmation by a High Court. District and sessions judges are usually members of the Indian Civil Service, but a small proportion of the posts is filled by appointment from the provincial judicial services and from the bar. The appointment, posting and promotion of district judges are made by the Governor in his individual judgment after consultation with the High Court. For the purposes of the constitution, the term "district judge" means additional district judge, joint district judge, assistant district judge, chief judge of a small causes court, chief presidency magistrate, sessions judge and assistant sessions judge. For a person not in the service of the Crown to be eligible for appointment as a district judge, he must be a barrister, pleader or Scottish advocate of at least five years' standing and must be recommended by the High Court.

Magistrate's Courts.—Below the sessions courts are the magistrates' courts. These courts are of three classes—invested with first class, second class and third class powers, respectively. A magistrate with first class powers may

inflict punishments up to two years' imprisonment or fines up to Rs. 1,000 ; with second class powers, up to six months' imprisonment or Rs. 200 fine ; with third class powers, up to one month's imprisonment or Rs. 50 fine. Appeal lies to a district magistrate from decisions of second and third class magistrates. The magistrate's powers are exercised within definite territorial limits. The Code of Criminal Procedure regulates the organisation and direction of criminal work. First class magistrates may also commit for trial at the sessions courts offences for which they have not powers to inflict adequate punishment. Appeal lies from a magistrate's judgments to a sessions judge. Special arrangements may be made by the governments concerned for the trial of particular cases, e.g., they may nominate special magistrates or invest a magistrate with increased powers of punishment, except the power of death sentence.

District magistrates have as a rule little time for judicial work, which they delegate to their subordinates. In all districts and towns honorary magistrates are appointed, who try cases from time to time according to their powers. In the presidency towns there are presidency magistrates who try minor offences and commit major offences to the High Court. Magistrates are also empowered to prevent crime, e.g., by demanding security for good behaviour. They are also empowered to deal with unlawful assemblies and to prevent public nuisances. The judicial powers of magistrates extend from the district magistrate down to the village officials.

Juries and Assessors.—The jury system exists for the trial of graver criminal offences. Juries are not used in civil cases. If, as sometimes happens in less advanced districts, it is impossible to empanel a jury, assessors may be appointed. The assessors sit and assist the judge but do not control his decision. Juries consist of nine members (in High Court cases) or (in other courts) an uneven number not exceeding nine, as fixed by the provincial government. A judge must accept the opinion of the majority, but if he considers they have given a wrong verdict, he may refer the case to the High Court, which may alter or annul the finding of the jury.

Inferior Civil Courts.—The organisation of the inferior civil courts varies from province to province. These courts have all been constituted by various enactments and rules.

Generally speaking, there are three grades of such courts—district court, subordinate judge's court, and munsiff's court. The district court has jurisdiction over an administrative district, and is presided over by the district judge, who is a member of the Indian or a provincial judicial service. The district court is the chief civil court of original jurisdiction in the district. This court has jurisdiction in all original civil suits, save in so far as they must be instituted in lower courts if the lower courts are competent to try them. The district judge has control over all the lower civil courts in the district. The courts of subordinate judges have the same original jurisdiction as the district courts. Munsiff's courts, the lowest civil courts, have jurisdiction in suits not exceeding Rs. 1,000, or, in some cases, Rs. 2,000 in value. An appeal lies from the decisions of a munsiff to a district judge, who may give the case for disposal to a subordinate judge. District judges also hear appeals from the decisions of subordinate judges, save in suits exceeding Rs. 5,000 in value, when the appeal lies to a High Court. An appeal lies to a High Court from the decisions of district judges.

From province to province there are many other courts for special purposes, e.g., small cause courts, both in the presidency towns and districts, for the trial of petty money suits, with a limited right of appeal. This power may be conferred on subordinate judges and munsiffs. In the presidency towns the small cause courts try suits involving as much as Rs. 2,000 or Rs. 2,500 in value. In Bombay and Calcutta there are also coroner's courts to conduct inquests on bodies of persons who have been accidentally killed, etc. The functions of the coroner in country districts are exercised by the police officials and magistrates.

Law Officers.—The chief law officers, other than permanent officials in the secretariats, such as departmental secretaries, draftsmen, and legal remembrancers, who usually are officers of the judicial side of the Indian Civil Service employed at headquarters, are the advocates-general, appointed under the provisions of the constitution to advise government in legal matters, standing counsel (in some cases), government pleaders and solicitors. The functions of the various classes of officers are determined by rules. In districts, official legal work is undertaken by government pleaders and public prosecutors, who are paid by fees. In

the presidency towns there are semi-judicial sheriffs whose functions are connected with the original side of the High Courts. They are responsible for the execution of processes, custody of persons, and the calling of public meetings of a ceremonial kind. The sheriff of Calcutta, by constitutional provision, is appointed by the Governor, exercising his individual judgment, from a panel of three names recommended by the High Court.

Executive and Judicial.—One of the most debated questions in recent years has been the union of executive and judicial powers in the organisation of government. Before the advent of the British, such union of powers was common and accepted without murmur. But with the growth of education and the development of constitutional freedom, the union of executive and judicial powers has been held to be contrary to the theory of separation of powers,[1] and, therefore, subversive of freedom. This union is seen at its maximum in the functions of the district magistrate or collector, or deputy commissioner, as the case may be, and his subordinate officers. His functions are mainly connected with revenue, and such other work as we have noted. He is also a magistrate with first class powers. Within these powers he may undertake what judicial work he pleases. He may transfer cases, call for records, send cases to the High Court for revision, and recommit accused persons for trial. He supervises the work of his subordinate officers who may have magisterial powers of the first, second or third class. As the careers of these subordinates depend partly on his recommendations, they are affected considerably by his opinion of them, and it is humanly impossible for them to be free from his influence in their general and judicial work. The magisterial work of the collector includes the prevention of crime, disturbances and nuisances. His judicial work is subject to the appellate jurisdiction of both the sessions judge and the High Court, so that, particularly in more serious cases, he cannot depart far from the ordinary legal processes and arguments. In practice few collectors have time for much judicial work.

Revenue Courts.—Another instance of the union of executive and judicial powers is the revenue courts. The jurisdiction of the High Court is restricted in respect to revenue cases. Such cases are decided in revenue courts, which are pre-

sided over by revenue officials. After the passing of the Regulating Act of 1773, which set up the dual authority of the Governor-General and his Council and the Supreme Court, the Supreme Court so hampered the executive government that the revenue administration was made extremely difficult, and in cases impossible. In 1781 the Amending Act took away some of the powers of the Supreme Court, and, in the time of Lord Cornwallis, collectors were given judicial powers for revenue purposes. Later Lord Cornwallis affirmed the principle that executive officers should not be empowered to interfere with the legal rights of landholders. The acts of revenue officials were made subject to the jurisdiction of the courts. In the course of time the spheres of authority of the courts and collectors were gradually made clearer. The courts do not interfere now in purely fiscal matters, i.e., with the actual assessment and collection of revenue. Questions of title to land are now tried by the courts, as also, are rent suits. Where rent suits are tried by the revenue officials, the procedure is practically the same as that of a civil court.

Revenue Appeals.—As regards courts of appeal in revenue matters, the law provides that no member of a legislature may be a member of any tribunal in British India having jurisdiction to entertain appeals or revise decisions in revenue cases. Moreover, on the introduction of provincial autonomy, if in any province the local government exercised appellate jurisdiction in revenue matters, the Governor had to constitute a tribunal consisting of such person or persons as in his individual judgment he might think fit to exercise such jurisdiction until the provincial legislature made other provision.

6. SYSTEM OF GENERAL ADMINISTRATION

The Centre: Transition.—At the moment, the administrative system of India, regarded as a whole, is in a transitional stage, for while the provinces passed from dyarchy to parliamentary government in April, 1937, the Central government retained its old organisation, with some readjustments to meet the new constitutional position. When provincial autonomy was introduced, the central government technically speaking assumed the characteristics of the federation, in its relation to the provinces; but till Part II of the Act, i.e. the Federation of India, is introduced, the central-federal government will

not assume its complete federal character. The Governor-General has assumed the office of Crown Representative, the Federal Court has been established and certain minor administrative adaptations have been made; but till the formal creation of the federation, the federal legislature will not be elected, nor counsellors and ministers appointed. The introduction of the Federation of India, however, will make no fundamental difference to the organisation of the administrative departments of the Government of India. Provincial autonomy has already made it necessary for the central government to readjust its machinery; the process indeed has been going on for some time; for example, the provincial governments used to administer some central subjects such as ports and shipping. These were taken over by the Government of India some years before the new constitution was introduced in the provinces.

The organisation of the federal-central government is determined partly by the type of work to be done and partly by the constitutional position of the various authorities. The federal government is now a self-contained machine. With the exception that it still borrows, and will continue to borrow its higher administrative officers from the provinces, it has its own services for the administration of central-federal subjects. Some functions, such as the conduct of direct elections for the federal legislature, will continue to be done by the provinces, on an agency basis.

The Departments.—The head of the central-federal organisation is the Governor-General with his Executive Council, to be replaced in due course by counsellors and ministers. The departments, it may be assumed, will remain as they now are, whatever the character of the directing authority.

The Governor-General's Departments.—Two departments are the direct charge of the Governor-General—the Political department, which deals with all affairs connected with the States, and the Secretary of which is also Secretary to the Governor-General in his capacity of Representative of the Crown, and the External Affairs department, which conducts all matters connected with the territories outside India with which India has treaty or other relations. The latter is India's Foreign Office.

The Home Department.—The Home department deals with general administration, internal political affairs, police

subjects, newspapers, service questions and other subjects. The department is in administrative charge of the central-federal Public Service Commission. Attached to it also are a Police Intelligence Bureau and a Bureau of Public Information.

The Finance Department.—The Finance department is India's Treasury. It is responsible for the examination of all matters from the finance point of view. It prepares the budget and supervises expenditure through its allied office, the Auditor-General's department. It also administers the mint and security printing offices. Through the Central Board of Revenue, it controls the administration of central-federal services of revenue e.g. customs and income tax.

The Defence Department.—The Defence department administers all matters concerned with defence; it is India's War Office. The Commander-in-Chief is in executive charge of the armed forces of the Crown.

The Legislative Department.—The Legislative department is responsible for the preparation of all bills, rules and regulations, and for advising in all legal matters. It also conducts the administrative work arising from meetings of the legislature.

The Labour Department.—The Labour department is responsible for all labour subjects including factories, workmen's compensation, trade disputes, trade unions, wages and the supervision of labour on railways and docks. It also administers subjects connected with migration, mines including the Mines Inspection department, minerals and geology including the Geological Survey, printing and stationery, technical education, safety legislation and administration, and federal public works.

The Department of Communications.—The department of Communications deals with broadcasting, civil aviation, meteorology, ports, posts and telegraphs including cables and wireless and roads. The railways in India are controlled by the Railway Board, to be replaced, when the federation is introduced, by the Federal Railway Authority. At the head of the postal and telegraphic system is the Director-General of Posts and Telegraphs and his staff. There is also an office for civil aviation called the Civil Aviation Directorate. The Government of India also maintains a consulting engineers' office for roads and an advisory officer for the administration

of ports. The actual administration of ports is conducted by Government of India officers stationed at the different ports, such as principal officers of the Mercantile Marine Department, nautical surveyors and engineers and ship surveyors. The meteorological service is under the Director-General, Observatories, who has a large staff of technical assistants posted at various centres such as Agra, Bombay, Calcutta and Karachi.

The Commerce Department.—The Commerce Department deals with tariffs, trade treaties, trade intelligence, commercial education, weights and measures, industries, international exhibitions, patents, designs, merchandise and trade marks, insurance and actuarial work and shipping.

The Department of Education, Health and Lands.—The department of Education, Health and Lands deals with a miscellaneous number of subjects. It is responsible for the management of a number of all-India institutions, such as the Forest Research Institute, the Imperial Agricultural Research Institute, the Imperial Library and the Indian Museum. It also maintains a Public Health Staff responsible for inter-provincial co-ordination and some other matters. The Educational Commissioner, under this department, has similar functions. Other offices administered by the department are the Survey of India, and the Archæological, Zoological and Botanical surveys. The department also controls the Imperial Council of Agricultural Research, the Imperial Institute of Sugar Technology, Cawnpore, and the office of the Agricultural Marketing Adviser of the Government of India. It has a staff of technical agricultural advisers and also administers matters arising from certain overseas appointments—the agents of the Government of India in Ceylon and Malaya, and the Agent-General in South Africa.

Provincial Administrative Systems.—The introduction of provincial autonomy made no material difference in the administrative system in the provinces. The transference was made easy because the dyarchical system already contained a parliamentary side: the abolition of reserved departments meant little more than a change in the type of the administrative directing personnel. The essential part of the system—in the districts—continued as it was under the previous form of government.

Regulation and Non-regulation Provinces.—Up to

1834, the method of legislation of the East India Company was by regulations issued by the Executive Councils of Calcutta (Fort William), Madras (Fort St. George), and Bombay. These regulations, framed under the Charter Acts, were often complicated, and in course of time it was decided not to apply them to the less advanced provinces. The old North-Western Provinces were included in the presidency of Bengal and placed under the Bengal code, and new rules based on existing regulations, but simplified, were applied to other territories. Thus the provinces which used to be known as "Regulation Provinces" were Bengal, Madras, Bombay, and the North-West Provinces (Agra) ; the others were known as "Non-regulation Provinces." With the progress of the Non-regulation provinces the old distinction has lost its force, but it has left certain traces in the administrative system. By the Government of India Act 1919 the old Regulation and Non-regulation provinces were placed on an equality; each had a duly constituted Governor, executive council, ministry and legislature. By the Government of India Act 1935 the executive councils were abolished and a uniform system of direction introduced.

The Governor and Ministry.—The Governor is the head of the provincial administrative system, aided and advised by his ministers ; in respect to those matters in which he acts in his discretion, he is responsible to the Governor-General. In the normal administrative field, the responsibility for all work of provincial governments rests on the ministry. Each minister is in charge of a department. The division of work is determined according to Rules of Business framed under Statutory authority. Governors are appointed as a rule, for five years though the period of tenure may be extended. In the presidencies namely Madras, Bombay and Bengal, Governors are usually appointed from outside the official services of India. They are usually members of the English aristocracy who have taken part in public affairs in England. The Governors of the other provinces are recruited from the Indian Civil Service.

Departments.—The pivot of all provincial administration lies in the provincial secretariat, the organisation of which varies from province to province according to the amount of work to be done. The number of departments depends not

only on the work to be done but also on the number of ministers in charge of departments. In Bengal, for example, the first ministry was eleven in number and their departments were as follows: (1) the Home Department, (2) the Judicial and Legislative Departments, (3) the Finance Department, (4) the Department of Public Health and Local Self-Government, (5) the Department of Communications and Works, (6) the Department of Commerce and Labour, (7) the Revenue Department, (8) the Department of Forests and Excise, (9) the Department of Agriculture and Industries, (10) the Department of Co-operative Credit and Rural Indebtedness, and (11) the Education Department. The number of ministers depends on the usual factors prevailing in a system of parliamentary government—party influences, personal qualities and status, etc. As in other countries, the ministries will vary in number from time to time according to political circumstances. In the first ministries under the new constitution, the numbers varied from eleven in Bengal to two in Sind. In the larger provinces outside Bengal, the most usual number was about six or seven.

The Secretariats.—In the organisation of the secretariat, the principle is usually observed that one secretary (he may be an additional, joint or other grade of secretary) deals with one minister only and is in executive charge of one department only. Secretaries are assisted by deputy, under and assistant secretaries and office staffs, as may be required. Secretaries to government are responsible for advising ministers and for carrying out their policy. They have also the statutory duty of reporting to the Governor and to the minister, any questions which appear to them to involve the Governor's special responsibilities. Under the Government of India Act, 1919, practically all secretaryships both in the Government of India and in provincial governments, were reserved to members of the Indian Civil Service; under the Government of India Act 1935 this reservation was continued by rules framed under the Act.

Boards of Revenue.—Provincial secretariats act as directing and co-ordinating authorities in the work of general administration; but in revenue administration, in most provinces, there is a Board of Revenue which acts as an intermediary between the chief district officials and the provincial government. Boards of Revenue (or their equivalent where they

exist—Financial Commissioners) in their administrative capacity constitute the chief revenue authority and relieve the provincial government of detailed work. They also act as appellate authorities for certain revenue or tenancy purposes. Boards of Revenue usually act also as courts of wards. Except in revenue matters, the provincial secretariats correspond directly with various classes of district officials posted throughout the province, on whom the real onus of administration lies.

General Administration.—The general administration of the provinces is based on the principle of repeated subdivision of territory. Each area is in charge of an official who is subordinate to the official of the area above him, and who is superior to the official of the area, or areas, subordinate to him. The central unit of administration is the district, which in some provinces is part of a wider unit, the division, and in all provinces is subdivided into smaller areas.

The Commissioner.—The highest district official is the commissioner, except in Madras where the district is the supreme unit. The commissioner is in charge of a division, which ordinarily comprises from four to six districts. The commissioner supervises the whole work of his division. He is the intermediary between the district officials and the government or Board of Revenue. He acts as a court of appeal in revenue cases. The commissioner is usually a senior member of the Indian Civil Service. He used to exercise judicial functions, but these have now been transferred to the district judge.

The Collector-Magistrate.—The district officer, or collector, is in charge of the district. He is a member of the Indian Civil Service, or of a provincial Civil Service. The name "collector" arises from his duties as a revenue official. He is also a magistrate with judicial powers in criminal cases. The collector used also to be a civil judge, but civil judicial work has now been transferred to district judges. The district officer is the representative of the government in his district. A large part of his duty is concerned with revenue administration. In Bengal, where landlords contribute fixed amounts according to the Permanent Settlement, his work is not so heavy as in a province like Madras, where the revenue is paid by individual cultivators. In Bengal he is responsible for the management of government estates, and private estates

administered by the Court of Wards. He is also responsible for all matters affecting the welfare of the cultivators, and, in some provinces, for the settlement of rent disputes, and for the arrangement of loans from government for agricultural purposes. He is also responsible for the administration of other sources of revenue, such as excise and stamps, and he is in charge of the district treasury. He gives regular returns of district crops and other statistics and prices. With the growing specialisation of functions in administration the collector has less direct responsibility than he used to have. Education, sanitation, jails, forests, income-tax, excise, public works and agriculture are now under separate departments, but his advice and co-operation are needed from time to time in all these. The growth of local self-government has also relieved the collector of much detailed administration in the case of municipalities and district boards. As time goes on, the functions of these bodies tend more and more to pass into non-official hands; nevertheless he is in constant touch with these bodies even though officially he may not be chairman. In all local elections he is responsible for recommending nominations and general supervision. He and his subordinate staff are returning officers for the territorial constituencies of the legislatures, though, over wider areas, commissioners do these duties. He has almost literally hundreds of miscellaneous or contingent duties such as famine relief, arrangements for ceremonial visits, reports on anything referred to him by government, recommendations for various branches of the provincial services, interviews with and advice to inhabitants of his district. He has many other functions which are semi-obligatory, such as taking a personal interest in the institutions of the district, especially new institutions, such as night or industrial schools. He is frequently *ex-officio* president of bodies, such as school committees. He is also a touring officer. On his tours he inspects the work and offices of his subordinates and generally acquaints himself, and shows sympathy with the work of his district. He is also a magistrate with first class powers. As a rule the collector leaves much of the magisterial work to his subordinate officers, but he is responsible for the supervision of their work. As magistrate he is also responsible for the peace and good order of the district. The organisation and internal management of the police of the district are

under the police superintendent. In matters relating to crime and the peace of the district, the superintendent of police is under the district magistrate. In regard to the internal management of the police force he is under the inspector-general of police, who is assisted by deputy inspectors-general, each of whom in the case of the district police is in charge of a "range" of districts.

Other District Officials.—Stationed at the district headquarters is usually a number of other officials who are responsible for specialised branches of administrative work—such as the civil surgeon, who controls or supervises government or public hospitals and dispensaries and acts as medical attendant to government officers; the public works officer (executive or other grade of engineer, according to the type of district and organisation) who is responsible for the upkeep of government buildings; the forest officer and inspector of schools, the area of whose jurisdiction may be wider than the district; the excise superintendent; the district engineer, who is a servant of the district board, and many assistants both to these officials and to the magistrate himself. The district and sessions judge is also stationed at the headquarters of the district.

The Subdivisional Officer.—The district is subdivided into smaller areas or subdivisions each of which is in charge of an official of the Indian, or provincial civil services. These officials act under the district officer or collector. Their powers and duties are similar to his own, but less wide. The number of subdivisions in a district varies within provinces and from province to province according to the size of the district. In Bengal five is a usual number of subdivisions in a district, though some districts have no subdivisions at all. The headquarters, or *sadar* subdivision, is where the district headquarters, with the magistrate's residence, is situated. In subdivisions there are court houses, offices, treasuries and jails, as at the district headquarters. The subdivisional officers in Bengal and in Madras reside at the headquarters of their subdivisions, but in Bombay and the United Provinces they live at the district headquarters station. Subdivisional officers, like collectors, are touring officers. They inspect the smaller areas, or thanas (in Bengal). The thana is a unit of police administration, in charge of a sub-inspector. The lowest revenue unit is the

subdivision, which usually is in charge of a deputy collector. The sub-deputy collector has no separate charge ; he assists the collector or deputy collector in charge of a subdivision. In Bengal he may also be in charge of a "circle," or a combination of union boards : as circle officer he has a miscellaneous number of duties connected with the working of union boards, the supervision of chaukidari work, reporting on the working of union benches and courts and the collection of information and statistics. In Madras, Bombay and the United Provinces there are smaller units, taluks or tahsils, administered by tahsildars, or, as they are called in Bombay, mamlatdars. These belong to the subordinate civil service, and in larger areas are assisted by deputy or naib-tahsildars. Below these, in various provinces, are kanungos or revenue inspectors, and the village officials, the karnam, karkun, or patwari (village accountant), the lumbardar and chaukidar, or village watchman.

Non-regulation Provinces.—Though the distinction between Regulation and Non-regulation provinces has now lost its force, certain remnants of the old system remain in the nomenclature of officials in Non-regulation areas. The body of superior officers in these provinces used to be known as the Commission, e.g., the Punjab Commission. This Commission used to be recruited not only from the Indian Civil Service but also from the Indian army. The higher posts were not, as in the other provinces, confined to the Indian Civil Service. The head of the district is called deputy commissioner, not collector. His assistants were called assistant commissioners, if members of the Commission, if members of the provincial Service, extra-assistant commissioners. The Financial Commissioner in the Punjab is the head of the revenue administration. The revenue administration of Oudh is under the Board of Revenue of the United Provinces. In the Central Provinces the divisional commissioners and district revenue officers are directly subordinate to the provincial government. Except that the district magistrate and his subordinates have wider magisterial powers, and that in some cases the executive and judicial functions are more fully combined, the district administration of these provinces is similar to that of the regulation provinces.

The Services.—The administration of India is carried on by various services, which may be classified in three main

divisions : (1) the All-India Services, (2) the Central Services, and (3) Provincial and Subordinate Services. The All-India or Imperial services are recruited by the Secretary of State. There used to be many such services but only three remain, the Indian Civil Service, the Indian Police Service and the Indian Medical Service (civil). Special provision is made in the constitution for the recruitment of irrigation officers by the Secretary of State in the interests of efficiency, but the other Imperial services such as the Indian Forest Service, the Indian Service of Engineers, the Indian Educational Service and the Indian Agricultural Service are in process of dissolution. They are to be replaced gradually by provincial services or by special posts filled on a contract basis.

The Central Services are employed under the direct control of the central or federal government. The more important of these services are the Railway, Posts and Telegraphs and Customs services. The members of these services are appointed and their conditions of service are determined by the Government of India. They are recruited as a rule by examinations held by the Federal Public Service Commission. The chief posts in the Government of India are filled by officers of the Indian Civil Service lent by provincial governments.

The I.C.S.—The most important service in India is the Indian Civil Service, or, as it is usually known, the I.C.S. The genesis of the I.C.S. is to be found in the differentiation of functions necessary for the conduct of the work of the East India Company. As the Company became an administrative or governing body as well as a trading company, it became necessary to create a special body of administrators distinct from traders. Previously the work of administration was carried on by men who were paid very small salaries but who were allowed to trade on their own account. Not only was the work of administration indifferently performed, but corruption was common. Lord Cornwallis reorganised the administrative side of the work. He laid down three principles : (1) that every civil servant should covenant not to engage in private trade and not to receive presents ; (2) that the Company should pay sufficiently liberal salaries to remove temptation from its officers ; and (3) that the principal administrative posts under the Council should be reserved for members of the service or, as it was called, the Covenanted Civil

Service. The members of the service had to sign a covenant in which they agreed not to trade or receive presents. Other civil services were known as the uncovenanted services. Members of the Indian Civil Service were at first nominated by the Board of Directors. In 1800 Lord Wellesley established a college at Fort William to train young civil servants, but in 1805 it was abolished in favour of a special college at Haileybury in England, where they received a two years' training prior to coming to India. In 1853 the nomination system ceased, and appointments were thrown open to competition. The first examination was held in 1855 ; Haileybury was closed in 1858. The competition is open to all natural born subjects of the Crown. After passing the examination, the successful candidates undergo a period of special training, usually at a university in England, after which a final examination must be passed. On passing this examination, the civilian comes to India, and is first posted to a headquarters station as an assistant magistrate. During his first two years he has to pass examinations in languages and departmental work. After that he is usually posted to a subdivision, whence by promotion he becomes a collector, or a district and sessions judge. By statutory rules a number of posts is always reserved for members of the service.

Other Services.—The other services are mainly the result of differentiation of functions in administrative work. In the early days of British administration, members of the Indian Civil Service were responsible for all branches of work. With the development of the country, other services were instituted on the model of the Civil Service. The Indian Police Service is recruited by the Secretary of State. This service provides officers for all higher posts in police administration. The Indian Civil Service and the Indian Police Service are sometimes known collectively as "the security services." For medical work there is the Indian Medical Service, the organisation of which as a distinct body dates back to 1764, when the various medical officers of the Company were organised. They were divided later into provincial cadres or establishments. In 1766 the service was divided into two branches, military and civil, a division which exists at present. Members of the service are recruited by the Secretary of State. The earlier years of an officer's service are spent in the army, and he retains army rank during the

whole of his service. He is liable to recall to the army if necessary. The Indian Medical Service (or I.M.S., as it is usually known) provides civil surgeons, residency surgeons, directors of research institutes and other research workers, superintendents of jails and asylums and some professors of medical colleges. There are subordinate services of assistant surgeons and sub-assistant surgeons, for both civil and military work.

The other Imperial services, as already indicated are in process of dissolution ; they are being replaced by central or provincial services. They are of a technical character, covering subjects such as education (the Indian Educational Service, with men's and women's branches), engineering (the Indian Service of Engineers, for public works, often known as the P.W.D., and irrigation), agriculture (the Indian Agricultural Service) and forestry (the Indian Forest Service). The Government of India has several "survey" services (geological, archæological, meteorological), and specialist services like the mines inspection staff, stores department and metallurgical inspectorate. Imperial services are recruited both in Britain and India. They used to be recruited solely in Britain, but, since 1919 examinations have been held in both countries.

Foreign Possessions in India: (a) French.—France and Portugal hold possessions in India. The French possessions comprise five main settlements, with other insignificant plots. The five are Pondicherry on the Coromandel Coast, Chandernagore near Calcutta, Karikal, also on the Coromandel Coast, Mahé on the Malabar Coast, and Yanam, on the Coast of the Northern Circars. The administration is conducted by a governor, resident in Pondicherry, who is also commander of the French forces, a chief justice and heads of the various administrative departments. The territories are divided into communes, with communal boards. There is also a judicial system, with civil and criminal courts, and courts of appeal. The various French possessions are represented in the French legislature by one senator and one member of the Chamber of Deputies.

(b) Portuguese.—The chief Portuguese possession is Goa. Others are Daman and Nagar-Avely on the Gujerat Coast, and the small island of Diu, with Gogla and Simbor, on the south of the Kathiawar Peninsula. The administration is carried on by a governor-general and council, composed of

official and elected members. In each district there is a district council. At Daman and Diu there are local governors under the governor-general. The governor-general resides in Goa.

7. LOCAL GOVERNMENT

The Village.—The system of local government in India is partly indigenous and partly the result of British administration. The most typical Indian unit of local government is the village, which is all but universal throughout India. The village is a small settlement with its houses usually more or less compactly situated in a central position on the village lands, and with its groves and wells. The village has its own organisation and its own laws—usually a number of customary rules. It is usually self-complete, with its own artisans, most of whom exercise their calling as a matter of caste. There are other functionaries, such as the accountant or writer, who keeps the village accounts and the chaukidar, or village watchman, who is the lowest of all the administrative officials in India.

Types of Village.—According to the division of Baden-Powell the Indian village is of two types : (1) The " ryotwari " village, the chief type outside northern India, where the revenue is assessed on individual cultivators. There is no joint responsibility in such a village. The headman—the *reddi*—is responsible for the maintenance of law and order, and for the collection of government revenue. (2) The " joint-village " of northern India, where the revenue used to be assessed on the village as a whole by a body of superior proprietors, who own the village. The organ of government in this type of village originally was the panchayat, or committee of the heads of the chief families. To the panchayat was later added the lambardar or headman, who represents the village in its dealings with local authorities. The Indian village is the primary unit of administration in India, and, where possible, it has been used as a unit of local self-government. The village headman is usually an agent of the local government, with a fixed salary. He is responsible for the collection of the revenue, and in some provinces has powers to try petty cases. He is responsible also for the maintenance of law and order and for making reports to the

higher authorities on the affairs of the village, such as health, the state of the crops, and crime. Sometimes there are separate headmen for revenue administration and for police purposes.

The village never really developed into an institution of local government such as we now know it, in either Hindu or Muhammadan times. There was always a tendency to place it under a local official directly responsible to local authorities. Representative self-government was unknown. With the advent of the British, and the development of local self-government, the village became not only a unit in the general administration, but a unit of representative self-government. Thus in Madras, the primary unit of local government is either the village or a group of villages ; in Bengal there are unions, with union boards, which deal with groups of villages.

The General Scheme of Local Government.—The scheme of local government over the whole of India varies according to the type of administrative units. Generally speaking, there is a series of local self-governing areas, arranged from lower to higher on a fairly uniform scale. Starting from the village or group of villages, with their panchayats or union boards, the scale ascends through the local board, the area of its jurisdiction being the sub-division or its equivalent, to the district board, the most important of local self-governing bodies in rural areas. Its area is the administrative district. This system prevails in Bengal, with its union boards, local boards (which may be abolished by the provincial government at the request of a district board), and district boards ; in Madras, with its panchayats, taluk boards, and district boards, and in the Central Provinces. In other provinces only two grades of board exist, e.g., in Bombay, district and taluk boards, and in the United Provinces, district and sub-district boards. The creation of the various grades of local self-governing bodies under the district board rests with the discretion of the provincial governments. The actual numbers, the organisation, and powers of these bodies vary from year to year.

Powers and Functions.—The powers of these bodies, and the extent of their functions, are also graded on a scale from lower to higher. Thus the panchayats and unions deal with local sanitation, roads, maintenance of order, dispensaries, wells and primary schools. They have very restricted powers of taxation to provide them with the funds necessary for

carrying on their work. Local boards have wider powers of the same type. The widest duties and powers are possessed by the district boards, which represent the whole district. These boards have their own organisations and staffs to carry out their functions. The district board, which is responsible for roads, bridges, medical, veterinary, educational and other types of work, usually has a permanent district engineer, and a veterinary officer, with assistants and offices. In educational work they work in close co-operation with the Education Department.

The various boards have statutory powers of taxation. The main sources of revenue are the land cess, road tolls, fees from pounds and ferries, and grants from the provincial governments. The accounts are subject to audit by officials of the provincial government. The number of elected members varies from about one-half to three-fourths, of the total. Other members are nominated by the provincial government on the recommendation of the district magistrate, who, in his turn, receives nominations for the smaller boards from his sub-divisional officers. In the early days of local self-government, the chairmen of the various boards were usually local officials—the collector or sub-divisional officer as the case might be. As the boards grew in power and strength, official chairmen were largely replaced by non-officials. In the course of time all local self-governing bodies will have non-official chairmen. The right of official nomination is nominally used to secure the representation of interests or communities which otherwise would have no representation, or to redress inequalities of election.

Municipal Government.—Municipal administration dates from 1687, when James II, granted powers to the East India Company to establish a corporation and mayor's court in Madras. The corporation, with an organisation on the English model, was created, but the opposition of the people to municipal taxation prevented it from becoming a reality. The only effective result of this effort in Madras was the creation of a mayor's court, the functions of which were more judicial than administrative. The Charter Act of 1793 empowered the Governor-General to appoint justices of the peace for the presidency towns, who, in addition to their judicial duties, were to have municipal duties such as the cleansing and repairing of the streets, and certain powers

of local taxation. The municipal powers and duties were gradually widened, till, from 1856 onwards, corporate bodies of three paid nominated members were created. After the Councils Act of 1861 the basis of the present system was laid. Acts were passed between 1888 and 1904 for the creation of corporations in Calcutta, Bombay and Madras. Municipalities are now of two types—district municipalities and presidency municipalities. District municipalities are created by provincial government under the various Local Government Acts. The presidency municipalities were incorporated by special Acts, the Bombay Act of 1888, the Calcutta Act of 1899, and the Madras Act of 1904.

Constitution of Municipalities.—Provincial governments have powers to create municipalities in areas where in their opinion municipal government will be beneficial. Such municipalities are created in towns with a sufficient number of inhabitants to justify self-government. The municipal government is vested in a body of commissioners or councillors, called the municipality or municipal council or municipal committee. In most municipalities the commissioners are partly elected and partly nominated. The proportions of elected to nominated members, varying from one-half to three-fourths, is usually fixed by law, though provincial governments have usually the power to vary the proportion. The proportion of salaried government officials who may be nominated is usually limited. Nomination is used mainly for the representation of minorities. Usually a number of posts is represented on an ex-officio basis. The rules of election are drawn up by the provincial governments concerned. Voters must be male residents not below a specified age. Property or status qualifications are usually essential. For voting purposes municipalities are arranged into wards, though sometimes voting is by communities. In some cases both principles are adopted. Wards are used also as a basis of municipal supervision and general organisation.

The maximum life of a municipal council is, as a rule, three years. A chairman and a vice-chairman are usually elected by the commissioners, though they may be nominated by the provincial government on the advice of the collector or commissioner. The provincial government possesses large powers of control in cases of abuse of power or neglect of duty by a municipality. The government may provide for

the carrying out of work which the municipality neglects, or, in extreme cases of neglect or abuse of power, it may suspend the municipality altogether. The local government may also restrain a municipality from performing an unlawful act or one which may cause annoyance to the public or endanger the public peace. The functions of the local government are exercised through the district or divisional officers (in Bengal, district officers and commissioners).

Municipal Staff.—Each municipality has its own permanent staff, the chief of which is the secretary. With the growing work the staff is now increasing rapidly, especially in matters regarding public health, for which staffs of public health officers are maintained. The local government exercises considerable control over the more important municipal appointments. It also, through the commissioner or collector, sanctions the municipal budget, and sanction implies power of amendment.

Municipal Functions.—The functions of municipalities include lighting, water supply, the construction, upkeep, cleansing, naming and watering of streets ; the maintenance and control of hospitals, dispensaries, primary schools ; the abatement and regulation of public nuisances and dangerous trades, drainage, the construction and maintenance of bazars, slaughter houses, wells, washing places, tanks, bathing places ; the preservation of public health by the reclamation of unhealthy areas, prevention of epidemic disease, vaccination, protection from fire and dangerous buildings ; and famine relief. They may also establish public parks, libraries, museums, middle or secondary schools, colleges, rest houses, and conduct exhibitions. Powers are conferred on them to enable them to fulfil their duties. They may prosecute inhabitants of their area who fail to carry out their orders, and may enter on premises and carry out work on them when an owner or occupier fails to do so.

Municipal Finances.—The income of municipalities is derived from various sources. About two-thirds of the total income is derived from rates. Provincial governments give contributions, chiefly for educational and medical purposes. The chief types of rates or taxes are the octroi (in Northern India), rates on houses, land, vehicles, horses, professions and trades. Tolls on roads and ferries, receipts from bazars and slaughter houses also form sources of revenue. In Bengal,

conservancy or latrine taxes are common. Rates are levied also for special services, e.g., water and lighting rates. Municipalities are empowered to borrow money on the security of the municipal rates and property. Loans are usually granted by provincial governments, which fix the term of the loan and also the rate of interest.

Presidency Municipalities.—The presidency municipalities of Calcutta, Bombay and Madras are constituted on a separate basis. The common features of these are the large proportion of elected members, a small number of members nominated by the provincial governments, and also a small number elected by such bodies as chambers of commerce, trades associations, port authorities, and universities. The members nominated by government represent, as a rule, minorities or special interests. These corporations have a very wide measure of autonomy. The general body of the councillors is responsible for the supervision of all municipal matters. The executive work is done mainly through committees, each of which supervises the work of the officials of its own department. The head of the municipality (chairman or mayor) is elected by the members themselves. In Calcutta, for example, the chief municipal officer is the mayor, who is elected by the councillors. Under the Act of 1923, he replaced the chairman of the corporation who used to be a member of the Indian Civil Service nominated by government. In addition to the mayor in Calcutta, there are also a deputy mayor, a chief executive officer, and other executive officers appointed by the Corporation. There are also five aldermen elected by the councillors. The only appointment which is subject to the approval of government is that of the chief executive officer. Corporations are fairly big bodies elected on a widely representative basis.

The functions and powers of the presidency municipalities are naturally far wider than those of smaller district municipalities. They possess extensive and valuable municipal property, and have large permanent staffs of secretaries, medical officers, engineers, etc., to carry on their work. Their incomes, derived principally from rates on lands and buildings, vehicles, trades and professions and special rates, such as water and lighting rates, are also large.

Improvement Trusts.—In some towns, e.g. Calcutta, Improvement Trusts have been organised on a municipal basis,

to relieve over-crowding, develop undeveloped areas, make new roads, lay out public parks and generally "improve" the cities. The chairman is nominated by government. The board of trustees is nominated by various bodies, such as local governments, corporations, elected commissioners of corporations and chambers of commerce.

Port Commissioners.—In the larger, or major ports, Calcutta, Bombay, Madras, Rangoon, Karachi and Chittagong, there are statutory bodies of port commissioners for the administration of all matters affecting the ports. They are elected by chambers of commerce, trades associations, corporations and other agencies. The chairman is appointed by government, on the recommendation of the commissioners. These authorities have their own staffs. Such bodies are under the central-federal government.

8. THE INDIAN STATES

Definition.—According to the Interpretation Act of 1889, the following definition applies to British India and the Indian States: "The expression British India shall mean all territories and places within Her Majesty's dominions, which are for the time being governed by Her Majesty through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India. The expression India shall mean British India, together with any territories of any Native Prince or Chief under the suzerainty of Her Majesty, exercised through the Governor-General of India or, through any Governor or other officer subordinate to the Governor-General of India."

Extent and Classification.—The Indian states cover 713,000 square miles of India, as compared with the 867,700 square miles of British India. Their population is approximately 81,300,000 : that of British India is 256,859,000. The states may be divided into three classes—the classification is that of the Butler Committee—(1) states the rulers of which are members of the Chamber of Princes in their own right ; (2) states the rulers of which are represented in the Chamber of Princes by twelve members of their order elected by themselves, and (3) estates, jagirs and others. The numbers in the three classes, as given by the Butler Committee, are respectively 108, 127, and 327, but whereas States of the first class have a population of nearly 60,000,000 and a

revenue of forty-two crores the other two classes between them have a population of only 8,800,000 and a revenue of three and a half crores. The states vary enormously in size and importance. Some of them are comparable with Indian provinces in size and importance; others are estates of only a few acres in extent. Hyderabad with an area of 82,700 square miles, a population of 12·5 millions, and a revenue of 6·5 crores, Mysore, 30,000 square miles large with 6·5 million inhabitants, and Kashmir with 3·6 million subjects living in an area as large as Hyderabad are comparable to some European states. Travancore has over 5 million subjects and Cochin 1·2 million. Gwalior and Baroda have 3·5 and 2·4 million respectively, and the Rajputana States include many individual states with large areas and populations such as Jaipur (2·6 million), Jodhpur (2·1 million) and Udaipur (1·5 million). Bikaner, Alwar, Kotah and Bharatpur are other large Rajputana States. In Central India, Indore (1·3 million), Rewa (1·6 million) and Bhopal are the most important States. In Western India there are Cutch, Bhavnagar and Junagadh, all with populations of over half a million. Patiala in the Punjab, the premier Sikh State, has a population of over 1·6 million. The Muhammadan State of Bahawalpur further west has nearly a million. Kalat occupies nearly two-thirds of the province of Baluchistan although its population is relatively small. The great Mahratta State of Kolhapur in Bombay has a population of nearly a million. In the United Provinces there are the two large States of Rampur and Benares, and in Bengal and in Assam, Cooch Behar, with approximately 591,000 inhabitants, Tripura, with 382,500, and Manipur with 445,600.

Internal Government.—The internal government of the states varies according to the size and state of development in the state. About thirty of them have instituted a form of legislative council of a consultative nature; forty have High Courts; thirty claim to have separated executive from judicial functions. In the larger states the administration is conducted on the pattern of British India. The head of the administration is usually known as dewan or chief minister. Often members of the services in British India are lent to the durbars of Indian States to assist or advise in the administration.

Historical.—The majority of the Indian states are of

modern origin. Many, however, were in existence before the grant by the Moghul Emperor in 1765 of the dewani of Bengal, Bihar and Orissa to the East India Company. How the existing states came into the possession of the present ruling families is a matter of history. Most of them have passed through many vicissitudes during their history, and now they differ largely not only in the type of population, but in the racial antecedents of their rulers. During the pre-British period their fortunes varied according to the policy of the ruling powers in India or the military power of their neighbours. Some of the states themselves are the remnants of powers which once extended far beyond their present borders.

British Policy.—With the rise of the East India Company to power the policy of the British, like that of previous rulers, changed according to circumstances. At one time a distinction was drawn between ancient and modern states, i.e., between the states which either explicitly or implicitly were recognised as independent by the Moghul emperors, and those which came into existence later. With the fall of the Moghul power, this distinction lost its force. The states passed under the protection of the British *raj*, with definite powers and rights. In the Queen's Proclamation of 1858 their position was guaranteed in these words : "We shall respect the rights, dignities and honours of Native Princes as our own ; and we desire that they, as well as our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government."

Paramountcy.—The Crown in relation to the Indian states is known as the "Paramount Power," and the relation between them is "paramountcy." In the words of the Butler Committee, "The 'Paramount Power' means the Crown acting through the Secretary of State for India and the Governor-General in Council who are responsible to the Parliament of Great Britain. Until 1835 the East India Company acted as trustees of and agents for the Crown ; but the Crown was, through the Company, the Paramount Power. The Act of 1858, which put an end to the administration of the Company, did not give the Crown any new powers which it had not previously possessed. It merely changed the machinery through which the Crown exercised its powers." The paramountcy of the Crown dates from the beginning of

the nineteenth century when the British became the *de facto* Paramount Power in India. The policy of the British Government has passed through several phases, which are divisible into four classes. The first is known as the "ring-fence" policy, or non-interference and non-intervention; the second, the policy of the subordinate isolation; the third, that of union and co-operation or, as it has been called subordinate alliance and co-operation—the present policy; and the fourth, the federal, which is closely connected with the third.

1. **Ring-Fence or Non-Intervention Policy.**—The ring-fence policy prevailed during the early days of the Company. At first the Company tried to avoid entangling itself in alliance or wars. Wars were forced on it for self-defence against Indian rulers, or because of national enmity, e.g., against the French. When the Company was forced into war, as a rule it was satisfied when it had demonstrated its superior force. Thus it refused to annex Oudh after Buxar; it restored Mysore after the death of Tippu Sultan; and it reconstituted the kingdom of Lahore after the First Sikh War. The Company tried to live within a ring-fence. As long as it was free to carry on its commercial activities, it did not particularly care who ruled outside that fence. Such treaties as it did conclude it regarded as treaties made with sovereign powers; it acted for many years as if it were under the emperor at Delhi. But when the Moghul empire broke up, the Company was left helpless. The emperor himself, Shah Alam, under whom it exercised its activities, was seized by the Marathas. In the ensuing chaos it perforce had to enter the lists to save itself. It began to regard itself as a sovereign power among the other sovereign powers of India.

2. **Policy of Subordinate Isolation.**—The policy of the ring-fence gradually gave way to that of subordinate isolation. Lord Wellesley from 1798 to 1805 formed alliances with some of the Rajput states, including "obedience" in his treaties as well as alliance. Lord Cornwallis dissolved some of Lord Wellesley's treaties, but from the time of Lord Hastings to the Mutiny (1813 to 1857-58) the policy of subordinate isolation became established. This policy, like the previous policy, was dictated by the political circumstances of the two greatest powers in India—the Moghuls and Marathas. The Maratha power broke up into a number of

units, with no unity. The Moghul empire had lost all its real power. The best organised power in India was the East India Company, and it was in its interests, as well as in the interests of India as a whole, to organise a stable government which could guarantee peace to the whole of India. The British Parliament, actuated by liberal principles, had supported the ring-fence policy, but the ravages of the Pindaris brought home to both the Company in India and the Government in England the necessity of settling the affairs of the Indian states.

Lord Hastings extended the sovereignty of the British government over the whole of India from east of the Punjab to west of Burma. Difficulties arose later in connection with the subdivision of states which had arisen as the result of the break-up of both the Maratha and Moghul powers. All states, small and large, lost their power of external independence, but the Company, even if it had the wish, had not the agency to control the domestic affairs of the states. A distinction was accordingly made between the larger states, which had revenues sufficient to bear the burden of internal administration, and the petty states, whose area and revenues were so small that they could not with any efficiency administer themselves. Full civil and criminal jurisdiction was given to the first class ; in the second class, the jurisdiction was divided between the Company and the states. The main object of this policy was to secure peace and good government within the states. Such powers as were not exercised in the smaller states by the chiefs, or residual powers, were and are exercised by the Government of India.

Annexation through Lapse.—During this period another doctrine was carried into effect—annexation through lapse. In the earlier period the Company had handed back conquered areas to the previous rulers. With the growth of the British power the need for consolidation became apparent ; and in many cases consolidation was impossible because blocks of Indian states came between larger areas of British territory. In many cases the consent of the Company government was necessary to succession in Indian states. The Company used this legal instrument to take the territories into their own hands. In other words, the succession of the territories "lapsed" to the Company. The reasons behind this policy were two : first, the consolidation of the British

territories ; second, the extension of the advantages of British rule to the inhabitants of the Indian states.

3. **Policy of Alliance and Co-operation.**—After the complete re-organisation of the government following the Mutiny the policy towards the Indian states changed. The Government of India now passed to the Crown, so that the remnants of the Moghul royal power were finally dispersed. The legal supremacy of the British Parliament became now an established fact over the whole of India. The old nominal distinction of "independent" lost its significance, but the policy which the Paramount Power adopted was not subordination but union and co-operation. This policy held the field for many years and still prevails.

Present Relations.—The present relations of the Government of India with Indian states are governed by written agreements, tacit consent, and usage. In most of the treaties made with the Indian states, custom or usage has played a considerable part. In fact, the case-law connected with these treaties has grown to such proportions as to raise doubts in the minds of some of the rulers as to the real value of the treaties.

The Rights of Indian States.—The rights of the Indian states are :—

1. The Government of India acts for them in relation to foreign powers and other Indian states. Thus they are secured against danger from without. At the same time the rulers are guaranteed that their rights will be respected.

2. The inhabitants of Indian states are subject to their own rulers. Except in the case of personal jurisdiction over British subjects and residuary legislation, the rulers of the states and their subjects are free from the laws of British India.

3. The Government of India intervenes if the internal peace of the states is seriously threatened.

4. The Indian states participate in all the benefits which the Government of India secures by its diplomatic action, and by its administration. They secure the benefits of the postal services, railways, commerce and trade of British India. They also enjoy free intercourse with British India both in commerce and in the normal relations of life. Their subjects, notwithstanding the fact that they technically are "foreigners," are admitted to most of the public offices

in India. The rulers and subjects of Indian states are also eligible under certain conditions for election to the provincial legislatures.

Obligations of the Indian States.—There are corresponding obligations on the part of the Indian states:—

1. Non-interference by the Government of India in Indian states implies a corresponding obligation on their part of non-interference in the affairs of the Government of India or provincial governments.

2. In foreign affairs the principle is recognised that the authority of an Indian state does not extend beyond its own boundaries. The rulers of the states cannot enter into diplomatic relations with foreign powers or other Indian states. The employment of subjects of foreign powers in Indian states is subject to the sanction of the Government of India. A ruler may not receive a commercial agent of a foreign power. He may receive no title, honour or salute from foreign governments. He may issue no passports to his subjects for foreign travel. Commercial treaties and extradition must be arranged for Indian states by the Government of India. The Government of India is also responsible for the administration of justice to subjects of foreign states. The subjects of Indian states are, for external purposes, British subjects, and participate in the benefits accruing therefrom. The boundaries of the Indian states, for international purposes, are regarded as British, and, as they enjoy British protection, the chiefs have no admiralty rights where the boundary is maritime.

3. In their dealings with other Indian states the states are subject to the control of the Government of India. This course was made necessary by the likelihood of inter-state quarrels arising through old animosities, and religious, caste or family differences. This condition implies a corresponding obligation on the Government of India to adjust differences in such matters as boundaries, inter-state railways, the surrender of criminals by one state to another, and the punishment of breaches of engagements between states. The Montagu-Chelmsford Report suggested a semi-judicial commission, on which the parties are represented, for the settlement of inter-state disputes.

4. It follows that the states have no need for standing armies, save in so far as is required for police purposes,

personal display, or for co-operation with the armies of the Crown. Most of the treaties with the Indian states lay down (*a*) that they must not embarrass the military defence of the Empire, which implies the limitation of the numbers, armament and equipment of the forces, that posts in the interior must not be fortified, and that there should be no arsenals in the states; (*b*) that the states must render active co-operation in securing the efficiency of the Imperial army, which implies the free access of Imperial forces to supplies, and the command of communications; (*c*) that, in times of emergency, they must take the part assigned to them. This duty rests partly upon treaties, partly on loyalty and good understanding. Before the Mutiny two types of forces—subsidiary and contingent—were maintained. Subsidiary forces were forces of the Company stationed in or near the territory of individual states, and supported by contributions paid by the chiefs. Contingent forces were troops raised in the states, for use, if necessary, in the preservation of internal order.

The Indian State Forces.—With the changes brought about by modern conditions of warfare, the troops of the states have been reorganised. Greater efficiency, better equipment and armament, capacity for quick mobilisation, and ability to act on a pre-arranged plan are now necessary. To secure this many of the larger states now maintain state forces. These troops are equipped similarly to the troops of the Indian army, and are inspected by officers of His Majesty's Army. They are recruited from the states, and belong to the states. They have frequently been placed at the disposal of His Majesty for service, as in the Great War.

5. In internal administration, the Crown protects the states, grants *sanads* of adoption or succession, and, in theory, renounces any responsibility regarding a ruler's dependants or servants. In practice, however, the Crown holds itself responsible for the prevention of abuses or anarchy within the states. The Government of India may even assume temporary charge in a state; the Governor-General-in-Council, subject to the control of the Crown, is judge of the necessity of such a proceeding. The Government of India also holds itself responsible for the administration of a state as trustee for a minor ruler. The sub-division of states by inheritance, and rebellion due to disputed successions, are both prevented

by the Government of India, as also is gross misrule. Thus arises the duty of each state to avoid the causes of interference.

6. The states are expected to co-operate with the Government of India in improvements of their administrative system or policy. Such co-operation depends mainly on the good relations prevailing between the states and the Government of India.

Special Jurisdiction in Indian States.—Special jurisdiction is exercised by the Government of India in respect to British subjects in Indian states, foreigners, and military cantonments. Where the law of British India confers jurisdiction over British subjects, or other persons, in foreign territory, that jurisdiction is exercised by the British courts which possess it. The subjects of European powers and the United States are on a similar footing. Where cantonments exist in Indian states, jurisdiction over both the cantonments and the civil stations is exercised by the Government of India.

Residents, Agents-General, etc.—The authority of the Government of India in the Indian states is exercised through its officials, or agents. In the larger states, the Government of India is represented by a Resident, who resides in the capital of the state and is in close touch with the government. In other cases, where the states can conveniently be grouped together, as in Central India and Rajputana, there is an Agent to the Governor-General, who is assisted by local agents, according to the size and importance of the states. These officials are the sole means of communication from the darbars of the Indian states to the Political Department of the Government of India, to other Indian states, and to officials of the Government of India throughout India. But they are not merely official channels of communication. They advise or assist in the general administration of the states in which they are posted.

4. **The Federal Policy.**—The Simon Commission looked forward to the ultimate establishment of a federation of the Indian states and provinces, but they thought that the rulers would not be willing to enter a federal system without preliminary experience of joint deliberation on matters of common concern. They accordingly recommended that a policy affecting the British India provinces and the states should be

discussed in a Council of Greater India which would be of a consultative and not of a legislative character. The main difficulties in bringing the states into a federal union are two. First, they are entirely different in status and character from the British India provinces, and, second, they cannot be expected to federate on the same terms. Broadly speaking, the Indian states are under a system of personal government with a large measure of independence. Their accession to the federation must therefore be a voluntary act on the part of their rulers; hence it has been necessary to devise the constitutional plan of instruments of accession. These instruments of accession are in effect a statement of the conditions on which the rulers agree to their states becoming federated. It also follows that the representatives of the states on the federal legislature must be nominated by the rulers and must continue to owe allegiance to them. The principle underlying the federal policy is that the unity of India would be in danger without a definite constitutional relationship between the states and the provinces; as the Joint Select Committee pointed out, "it is this which has influenced the rulers in their attitude towards federation. They remain perfectly free to continue if they so choose in the political isolation which has characterised their history since the establishment of the British connection or they may enter into the unity of a greater India."

The Chamber of Princes.—In 1921 the first substantial step was taken towards bringing the states into closer constitutional connection with British India, when the Chamber of Princes was created. In this Chamber 108 rulers are represented separately, in their own right. They are rulers who have dynastic salutes of eleven guns or over, and rulers who exercise such full internal powers as in the opinion of the Viceroy qualify them for admission. In addition, the rulers of 127 other states are represented by 12 spokesmen. The Viceroy is president of the Chamber, and a Chancellor and Pro-Chancellor are elected from the members annually. One of the most important organs of the Chamber is the Standing Committee which advises the Viceroy on questions referred to it by him. It also proposes for his consideration other questions which affect the states as a whole or the states and British India.

Its Functions.—The Chamber of Princes is a delibera-

tive, consultative or advisory body. It has no executive powers. It meets annually in Delhi. By its constitution, treaties and the internal affairs of individual states, or the rights, dignities and privileges of individual rulers cannot be discussed; nor does the existence of the Chamber in any way prejudice the rights of states to direct correspondence with the Viceroy. Direct access to the Viceroy is a zealously guarded privilege of the rulers, and in recent years the states which used to be in direct relation with provincial Governors have now been placed in direct relation with the Viceroy, or Crown Representative.

The rulers of some of the larger states—such as Mysore, Travancore, Hyderabad and Kashmir have not been members of the Chamber of Princes, but, in the words of the Simon Commission, the establishment of the Chamber "marks an important stage in the development of relations between the Crown and the states, for it involves a definite breach in an earlier principle of policy according to which it was rather the aim of the Crown to discourage joint action and joint consultation between the Indian States and to treat each State as an isolated unit apart from its neighbours."

The Federation.—Since the Simon Committee reported, the federal idea has been translated into constitutional reality in the Government of India Act, 1935, the main constitutional provisions of which have already been examined, so far as they bear on the states. On the assumption that the conditions of federation will soon be fulfilled, the position of the states may be summarised briefly as follows: The position of the states with relation to the Federation of India will be of a dual character. To the extent that the rulers, of the federated states agree to submit to federal control as set out in the instruments of accession, the federated states will become integral parts in the Federation of India, but with regard to their other powers i.e. those spheres of authority which they reserve to themselves, they will still remain in direct contact with the Crown through the Viceroy or Governor-General in his capacity as Representative of the Crown. States which do not enter the federation will remain in the same relation to the Crown as at present i.e. they will be in direct relation with the Crown through the Representative of the Crown and his officers.

CHAPTER XXV

THE GOVERNMENT OF FRANCE

1. HISTORICAL

The Unification of France.—From the point of view of nationality France is one of the most homogeneous countries in the world. By the re-incorporation of Alsace-Lorraine in France after the Great War, the French national boundaries were made to coincide with the French population. The form of government in France is usually known as republican. The First Republic was established after the French Revolution, but by that time the national boundaries were complete. The unification of France into a nation was the work of kings. Like most western nations, France was welded together out of a number of independent or partly independent elements. The original "France" was a duchy situated round Paris. Surrounding it were many other duchies none of which owed allegiance to the Duke of Paris. Gradually, northwards, southwards, eastwards and westwards the Dukes of Paris extended their authority until "France" included Normandy, Anjou, Brittany, Flanders, Champagne, Burgundy, Aquitaine and other provinces.

The Roman and Merovingian Periods.—The Roman name for France was Gaul. Under the Romans, Gaul had a unity of organisation which she lost with the inrush of the barbarian conquerors (Visigoths, Ostrogoths, Vandals, Burgundians, Lombards and others). After the western empire of Rome ended (in A.D. 476), the Franks, a people of Germanic origin, became the most powerful of the invaders. Under Clovis they defeated several peoples who had settled in Gaul. Clovis accepted the Christian religion, and became a strong adherent of the orthodox Catholic Church. The other invaders had accepted Christianity, but not the creed of the Catholic Church. Clovis's acceptance of the orthodox Church gave him the support of the Church, a fact which helped him even more than military force. The dynasty of Clovis is known in history as the Merovingian dynasty.

The Carlovingian Period.—Despite the efforts of Clovis the Merovingian dynasty was not able to organise France strongly enough to secure stability. After Clovis's death

France split into three main parts—the Burgundian kingdom, in the south, Austrasia in the north-east (from the Meuse to beyond the Rhine), and Neustria, in the south and west. Many bitter struggles took place among these kingdoms, and the Merovingian kings were too weak to cope with the troubles. They lost power and prestige, and ultimately the dynasty was replaced by the Carlovingian, the founder of which was King Pepin (752-768). The earlier Carlovingians were only "mayors" or court officials of the Merovingians, but as mayors they really ruled France, owing to the weakness of the Merovingians. These earlier mayors, the chief of whom were Pepin of Héristal and Charles Martel, unified France by beating the Neustrians, and the Muhammadan power in Spain. Charles the Great (Charlemagne), the son of King Pepin, extended his sway over practically the whole of Europe. He conquered the Lombards (hence his title "King of the Franks and Lombards"), Bavaria, the Avars of Hungary, and the Muslim kingdom in Spain. In 800 he was crowned by the Pope as "Emperor of the Holy Roman Empire." After his death his successors were unable to keep his empire together: in 843 it was divided into three—the West (France), the East (Germany), and the Middle Kingdom (Lorraine). From this time the name France came into being, but at first it was only one of several duchies.

The Capetian Period.—The Carlovingians suffered the same fate as the Merovingians. With the decay in power of the kings the feudal powers of the great territorial nobles advanced. In 987 the most powerful of these nobles, Hugh Capet, became king, thus founding the third French dynasty. Louis the Fat (1108-37) consolidated the work of the earlier Capetian kings by taking a definite stand against the great feudal lords. Feudalism had developed to such an extent that the country was a series of semi-sovereign feudal states. Each great noble surrounded himself with nobles. Personal freedom was synonymous with military service. The old Frankish freemen were swamped in the new privileged military classes, and it was the side of this class that Louis the Fat championed against the feudal chiefs.

Non-Feudal Elements.—Although the feudal system reached its highest perfection in France, certain non-feudal elements continued to live. It must be remembered that the Frankish people brought from Germany ideas of local self-

government which could not easily be suppressed by the feudal system. These ideas, moreover, frequently suited the convenience of the great feudal overlords, who used to grant charters of local self-government to rural areas or communes lying within their dominions. These charters were similar to modern constitutions. They allowed the communes to administer their own affairs through their own officers, within certain limits. The feudal obligations of the commune, of course, were set in the forefront, but along with these went a certain amount of real self-government. A general assembly of the commune regulated its affairs. It gave authority to executive officers, who were responsible to it, and who, under the general assembly, administered communal property, police and taxes; they were also responsible for the communal feudal obligations.

The Non-Feudal Towns.—More important were the privileges granted to the towns. Towards the end of the eleventh century many towns began to acquire privileges, which made them much more independent than the communes. The communes had been granted self-government largely because their organisations carried out the wishes of the feudal overlord. The towns were of two types—Roman and non-Roman. The Roman municipalities were founded and organised by Rome but were conquered by the Franks, who did not however interfere with their form of government. They allowed the Roman organisation to continue, but added elements which further strengthened the towns. The Roman organisation was aristocratic; the Franks introduced the democratic spirit. The Christian religion, moreover, helped the democratic idea not only by its spirit but by the fact that many of the towns became the seats of bishops who courted popular favour in their struggles with the feudal magnates. These towns were non-feudal.

Feudal Towns.—In the north, however, arose a class of feudal municipalities. The towns agitated for privileges, and, like the communes, received charters which gave them a considerable measure of self-government though they did not sever them from the control of the feudal barons. The Charters, like those of the commune, insisted on the usual feudal duties, which were exercised through the provost (in French, *prévot*) who was the representative of the feudal baron. The forms of municipal government were not every-

where the same. Sometimes one body elected the magistrates who were responsible to it: sometimes there were two bodies—an assembly of citizens and an assembly of notables, the former a legislative, the latter an executive body. But their powers and privileges were much the same. They elected their officials, administered justice and the police; levied their own taxes as well as the taxes necessary to pay the feudal dues. The kings, in their struggles with the barons, courted the municipalities, and secured their support. With the growth of the kingly power the centralisation of the monarchy ultimately led to the destruction of the self-government which had helped to support it.

The Development of the Monarchy.—Until Philip Augustus (1180-1223) the French monarchy was still further strengthened. France was consolidated by driving out the English from Brittany, Normandy, Maine, Anjou, Touraine, and part of Poitou. The king supported the towns against the feudal nobles, and materially strengthened the organisation of the central government. Under King Louis IX., known as St. Louis (1226-70), the kingship became still stronger. St. Louis kept the nobles well under control, and devoted himself to internal reform, the most notable being the encouragement given to the Parliament of Paris, a legal corporation, which became his chief instrument for fighting the feudal nobles. He also laid the basis of the later centralised absolute monarchy, by establishing bailiffs and provosts throughout France as the direct agents of the central government. These officials were made subordinate to the Parliament of Paris. Under his grandson Philip the Fair, who came to the throne in 1285, the royal power of the Capetian house reached its zenith. Philip is famous in history chiefly for his struggle with the Pope. This struggle caused Philip not only to lean on the Parliament of Paris but to call together, in 1302, the States-General.

The States-General.—The first States-General in many respects resembled Edward I.'s Parliament of 1295 in England. The name States-General arises from the three "estates" or classes which were represented—the nobles, clergy, and commons. In 1302 for the first time the "third estate" or commons was represented. But the States-General proved to be more an instrument of convenience than a vital and organic part of the machinery of government.

When centralised royal authority against the feudal barons was established, the function of the States-General was over. The king summoned it irregularly, at his own pleasure, and while he listened to its advice he was not compelled to carry out its decisions. Each of the three estates deliberated separately; each submitted its own grievances or advice. The only meeting they had in common was the opening meeting when they were formally addressed by the king. The States-General never achieved the power of the English Parliament. It was advisory, not legislative, but it served a useful function in giving the appearance, if not the reality, of constitutional government. For three centuries after 1302 France developed not towards constitutional or parliamentary government but towards absolutism.

The Provincial Estates.—The States-General of 1302 was preceded by the provincial Estates. These provincial Estates were originally feudal in character. They were in all probability summoned by the overlords to help them with advice and suggestions. The provinces which had such "Estates" were known as Estates-Provinces (French, *Pays d'Etats*). After the decay of feudalism these provincial estates were summoned at the king's will. They were given powers only in so far as it suited the central administration. They bought the right to collect and assess the taxes demanded by the central government, and they were allowed the right to levy taxes for local purposes. They had no definite function apart from the royal will. Like the States-General they kept alive the form of self-government.

Centralisations.—The royal struggle against the feudal barons resulted in the centralisation of all administrative agencies in Paris. In the days of the Capetian kings, the chief officers of government were feudal in name and character —the chancellor, chamberlain, seneschal, great butler, and constable. Justice was dispensed by a feudal court, composed of the chief feudatories of the crown. This court was a taxing and administrative as well as a judicial body. With the growth of France the duties of this council increased. It was subdivided into sections, each section being responsible for a branch of administration. Philip the Fair separated its functions into committees. The political functions were assigned to the Council of State, the judicial functions to the Parliament of Paris, the financial functions

to a chamber of accounts. The old feudal officials were merged in these new administrative agencies, according to their previous functions.

The Valois Dynasty.—After Philip the Fair, the Capetian kings declined in power. Philip's three sons, each of whom became king, were not able to cope with either internal politics or external dangers. With Philip VI. (1328-1350) came the Valois house, the question of the succession leading to the Hundred Years War. It was not till Louis XI. (1461-1483), that the royal power again asserted its supremacy. Louis crushed the nobles, strengthened the Parliament of Paris, and, by subduing the powerful Duke of Burgundy, Charles the Bold, whose great territorial possessions made him a serious rival to the king, dealt the deathblow to feudalism. From the reign of Louis XI. to the time of the first two Bourbon kings, Henry IV. (1589-1610) and Louis XIII. (1610-1643), France was torn between internal quarrels and external dangers. The struggles between the churches, with the destructive religious wars, fell in this period. With Louis XIII. and Louis XIV. (1643-1715), the monarchy reached its summit of power.

Position of the States-General.—During this period the States-General had a fitful existence. Two kings, Francis I. and Henry II. did not summon them, and, when summoned during the religious wars, they were so dominated by religious passion that they were not taken seriously. They ruined their position so much by internal dissensions that, after the death of Henry IV. (the first of the Bourbon dynasty) in 1610, they did not again reappear till 1789. The derelict functions of the States-General were to some extent assumed by the parliaments or legal bodies. These parliaments registered the laws of the country; and they took it upon themselves occasionally to refuse registration. Such refusal was accompanied by reasons, and as such was looked on by the kings as advice. But the parliaments claimed to be lineal descendants of the Frankish assemblies, and demanded a voice in the government. Their claim was supported by the fact that they had been able to exercise powers during the minorities of kings or regencies. Louis XIV., however, suppressed these claims, and passed an ordinance making it compulsory for the parliaments to register the laws sent to them without modification.

The Intendant.—Under Louis XIII, and Louis XIV., with their famous ministers, Richelieu, Mazarin, and Colbert, the whole administrative system of France was changed. The central figure in the new system was the intendant. Before intendants were instituted, the provinces had been ruled by governors, whose authority was tempered by the provincial estates (where they existed), or the politico-legal parliaments. The intendant superseded these. He became the absolute master of the province, and, as he ruled directly from the central government, the system of government was a complete administrative centralisation. The intendant was directly appointed by the king, and all provincial officials were directly under him. Local privileges were abolished; elections ceased. Even local tribunals of justice gave way to special tribunals called at the king's pleasure. The king's Council in Paris ruled France by orders-in-council. The chief agent of the council, the manager of France, was the Comptroller-General, through whose hands all affairs, great and small had to pass.

Position before the Revolution.—From the reign of Louis XIV. to the Revolution there were two more kings, Louis XV. and Louis XVI. During the reign of Louis XV. the foundation was laid for the Revolution. The people were oppressed and impoverished; the King squandered the resources of the country in evil living; the nobility and clergy lost their hold on the people, and a school of thinkers arose which assailed the basis of the existing social and political structure. The theories of Rousseau, in particular, had great effect, particularly as the people were willing to listen to anyone who had a plan to relieve them from their woes. In spite of the prevailing discontent, no democratic institution was able to cope with the central authority. The Parliament of Paris tried to regain its ascendancy by refusing to register the edicts of the king, but it was abolished in 1771. Louis XVI., after a series of fruitless struggles at reorganisation, finally, in 1788, as a measure of desperation, summoned the long dormant States-General. The opening of this States-General in 1789 was the real beginning of the French Revolution.

The Revolution.—The Revolution destroyed the whole of the previous system of government, but the revolutionaries found destruction more easy than construction. The States-

General from 1789 to 1791 changed its name twice. First it became the National Assembly; later the Constituent Assembly, and as such drew up a new constitution for France. With the new constitution and the reorganisation of government the Revolution seemed over, but a series of events, concerned partly with internal and partly with foreign policy, led to still greater upheaval. From 1792-1795 the Convention ruled France. It beheaded the ex-king and ex-queen, abolished Christianity, the calendar and many other things. Through the Committee of Public Safety the popular revolution passed into the Reign of Terror, the most bloody despotism in history till the Russian revolution. The Convention gave way to the Directory, which was succeeded by the Constitution of the year VIII. The head of the government was Napoleon, who, after a period as First Consul, in 1804 became Emperor.

Napoleon.—To Napoleon belongs the credit of re-organising France on a stable basis. The revolutionaries had not destroyed the centralised system of the kings. They failed to recognise that true popular government depends mainly on local self-government. Their attempts ended in despotism. This despotism Napoleon carried on, but he placed it on a plain, straightforward basis. In place of various councils and committees of the Revolution he set up single executive officials, with advisory councils. He divided the country into areas of Government known as departments. These departments were first established by the Constituent Assembly, which tried to obliterate the old boundaries of feudalism and privileges, and which, in so doing, enabled Napoleon to work out the most logical and most simple system of government in the world.

Later Development.—In spite of the frequent changes in both the personnel and the form of government, the advance of liberal forms of government was assured. Louis XVIII., who succeeded Napoleon, gave his assent to a bicameral legislature, and to the responsibility of his ministers to the legislature. Napoleon III. tried to revert to the old absolutism, but, coupled with the defeat of France in the Franco-Prussian War of 1870, his attempt cost him his throne, and was the immediate cause of the present French constitution. Napoleon's fall led to the Third Republic. The leaders of the Revolution, in 1871, called a National Assembly, which was

representative of all political parties; but the majority was monarchical. The monarchical party was divided within itself on the question as to which royal house should succeed to the throne. A compromise was the result, and the Assembly drew up a constitution for a republican form of government. The constitution was finally promulgated in 1875. It has been partially modified on four occasions, but is substantially the basis of the present system of government in France.

2. THE PRESENT GOVERNMENT OF FRANCE

The Constitution.—In drawing up the constitution, the Assembly of 1871-76 made a distinction between *constitutional* and *organic* laws. Constitutional laws were to be subject to a special process of amendment: organic laws were left to the ordinary legislative process by the two houses of the legislature. The constitutional laws of 1875 gave the outline of the machinery of government. The legislature was to consist of two houses, a Senate and a Chamber of Deputies. The executive was to be vested in a president. The relations of the houses to each other, the election and powers of the president, and his relation to the houses, were definitely stated; but the election of deputies and other matters were regarded as organic laws. In 1884 an amendment was passed which repealed the constitutional law affecting the Senate, and made its organisation and authority a matter of organic law.

The National Assembly.—The legal sovereignty of France is vested in the National Assembly. The National Assembly is the joint meeting of the Senate and Chamber of Deputies. The Senate and Chamber for ordinary purposes meet in Paris. As a National Assembly they meet in Versailles. The National Assembly meets to transact the business for which it is summoned, and at once adjourns. It cannot sit for longer than an ordinary legislative session, which is five months. It is forbidden by the constitution to repeal the republican form of government, but by the constitution it has power to repeal the law which forbids it.

Its Functions.—The National Assembly has two functions: (*a*) the revision or amendment of the constitution, and (*b*) the election of the President. A revision of the constitution takes place when the two houses of the legislature are agreed that a revision is necessary. The houses separately consider the points of revision, and as far as possible, try to know each

other's views. Once the houses agree, the suggested revision comes before the National Assembly. For constitutional amendment and the election of a President alike, an absolute majority vote is sufficient. The houses are the judges of their own constitutional powers. In this respect France is like England, and diametrically opposed to the United States, where the courts decide the constitutional powers of the legislatures.

The Legislature : The Senate.—The Senate is composed of three hundred and fourteen members. They are elected for nine years from citizens of forty years of age and above. One-third retires every three years. The system of election is indirect. The elections are made on a general ticket by an electoral college which is composed of (*a*) delegates chosen by the municipal council of each commune in proportion to the population, and (*b*) of the deputies, councillors-general and district (arrondissement) councillors of the department. In case of a vacancy, the department which elects the new senator is decided by lot. By the 1875 law seventy-five senators were to be elected by the united chambers, but the amendment of 1884 abolished this in favour of election by the electoral college. No member of the family of deposed French dynasties can sit in either the Senate or the Chamber of Deputies.

Powers of the Senate.—Legally the Senate has equal powers with the Chamber of Deputies, except in money bills. Money bills must originate in the Chamber of Deputies, though the Senate may amend them. In actual practice, as in most modern governments, the bulk of power lies with the Chamber of Deputies, or lower house.

The Chamber of Deputies.—The Chamber of Deputies is elected by universal manhood suffrage, for four years. Each citizen twenty-one years of age, not actually in military service, who can prove six months' residence in any one town or commune, and who is not otherwise disqualified has a vote. Deputies must be citizens not under twenty-five years of age. The system of election at present in force is the *scrutin d'arrondissement*, which, in 1927, replaced the general-ticket (*scrutin de liste*) method, combined with proportional representation. The French manner of election is very unstable. Since 1871, it has been altered several times, the general-ticket method finding favour at one period, and the district

method at another. The last *scrutin de liste* was introduced in favour of the district method, which had lasted thirty years, in 1919, and the district method was re-introduced in 1927.

The basis of election is that each arrondissement is given one Deputy, but if its population exceeds 100,000 it is divided into two or more constituencies. The principal dependencies are entitled to representation. Algiers has five seats: Cochin-China, Senegal, the French possessions in India, and others, have one each. The dates of elections are fixed by the President's decree. The President must order an election within sixty days, or (in the case of dissolution) within two months of the expiration of the Chamber. The new Chamber must assemble within ten days following the election. At least twenty days must separate the President's decree and the day of election.

The members of each house are paid for their duties, and, on payment of an annual sum, can travel free on all railways.

The President.—The President is the head of the executive. He is elected for seven years, by a majority of votes, in the National Assembly. No age limit is laid down: any French citizen may be elected, provided he is not a member of a French royal family. He promulgates the laws of the Chambers and ensures their execution. He selects his ministers from the Chambers, or sometimes from outside. He has the power of appointing and removing all officers in the public service. He has no veto on legislation, but can send a measure back to the houses for reconsideration. He can adjourn the Chambers at any time for a period not exceeding one month, but he cannot adjourn them more than twice in the same session. He can close the regular sessions of the houses when he likes after they have sat five months. Extra sessions he can close at any time. With the consent of the Senate he can dissolve the Chamber of Deputies. He must order new elections to be held within two months of the dissolution, and must convene the houses within ten days after the election. He has the right of pardon. He concludes treaties with foreign powers, though treaties affecting the area of France, or of French dependencies, require the approval of the legislature. He can declare war with the previous assent of both Chambers. He is responsible only in case of high treason, in which case he is impeached by the Chamber of Deputies and tried by the Senate.

Cabinet and Council of Ministers.—The French Cabinet is composed of Ministers. The same ministers also form the Council of Ministers. The Cabinet and Council of Ministers thus have the same personnel; but there is a sharp distinction between the one and the other. As a cabinet, the ministers are selected from the houses of the legislature. They represent the Chambers. Sometimes outsiders are chosen for cabinet positions; but whether members of the Chambers or not, they can attend the meetings and take a privileged part in debate. A minister can speak at any time, though he can vote only in the chamber of which he is a member. The ministers are responsible to the Chambers by law, not only by custom, as in England. They can hold office only so long as they command the support of the houses, or, more particularly, of the Chamber of Deputies.

The Council of Ministers.—As a Council of Ministers the ministers are the nominees of the President. They sit as a Council in the presence of the President, under a president of Council chosen by themselves. The duty of the Council is to exercise general supervision over the execution of the laws. In case of the death or resignation of the President, the Council acts till a successor is appointed. The Council is a definite legal body, whereas the Cabinet is not.

The Relations of President, Cabinet and Council of Ministers.—The twofold aspect of the same body is really the key to its relations with the President. As a Council of Ministers the body is the servant of a President. As a cabinet, it is his master. The President must choose ministers who command the support of the legislature, else the administration could not be carried on. Every decree of the President must be countersigned by the minister whose department it affects. Not only so, but most presidential decrees involve the expenditure of public money which brings them within the purview of the Chambers. Even the President's salary and allowances depend on the budget, which is presented by the Minister of Finance and passed by the Chambers.

The same is true of the official patronage of the President. Appointments to the public service require the countersignature of ministers, which practically means that appointments are in the hands of ministers. In France the number of appointments at the disposal of ministers is greater than in America, but the "spoils system" of America has not been

repeated in France, though the temptation is greater, owing to the dependence of French ministers on the Chambers.

The Ministries.—The number of ministries, and seats in the Council of Ministers varies from time to time. The permanent departments are much the same as in other highly organised national governments—Interior, Justice, Finance, Foreign Affairs, Defence and War, Air, Education, Commerce, Marine, Agriculture, Health, Labour, Posts and Telegraphs, Colonies and Pensions. From time to time ministries are created for special purposes, e.g. Assistance and Social Provision, and National Economy, and, as the French ministry is often of a coalition character, it is not unusual to include ministers without portfolio.

The Course of Legislation.—Bills may be proposed either by ministers (in the name of the President) or by private members. They may be initiated in either chamber, but money bills must originate in the Chamber of Deputies. Once a bill is presented, it has to go to a special committee for consideration. A member of this committee is chosen to "report" on it to the chamber. Private members' bills go to a special committee called the monthly committee on parliamentary initiative, but an emergency vote can save ministers' bills from the committee stage or private members' bills from the Initiative committee. After report from the committees each bill must go through two readings before it is presented to the other chamber.

Committees.—Committees are formed in a distinctive way. During the session every month the houses are divided into *bureaux*, or sections (nineteen in the Senate and eleven in the Chamber of Deputies). From the Senate *bureaux* are selected the various committees to which bills are referred. The *bureaux* of the Chamber of Deputies examine the certificates of election. Other *bureaux* are chosen by the Chamber for electing special committees other than the standing committees. Committees used to be appointed temporarily, i.e., till they completed the work for which they were appointed. Now standing committees are elected for the whole year. In the Senate they are elected by the *bureaux*; in the Chamber their composition is determined by the parties, each party being represented proportionately. The budget committee of the Chamber of Deputies is the most important. It is elected for one year. It consists of forty-five members. Its equiva-

lent in the Senate is the finance committee, which consists of eighteen members. These committees examine, criticise, and, in fact, control the whole course of financial legislation.

Administrative Law.—In France, as in other continental countries, the system of administrative law prevails, by which public officers are free from interference by the ordinary courts. The laws, too, are carried out by the executive according to the spirit of the law. The legislature lays down the general principles ; the executive fixes details, and makes all provision for carrying out the law. It may even supplement the law if it does not cover all the cases. The legality of such administrative action being free from the ordinary courts, the hand of the executive is greatly strengthened.

Instability of French Ministries : Questions and Interpellations.—The French ministries are notoriously unstable. They change much more frequently than the English Cabinet. The main reasons for the instability are two : (*a*) the existence of the multiple party system, and (*b*) interpellations. Ministers are subject to two types of question, first, the direct question, and second, the interpellation. Any member of either house on due notice may ask a direct question of a minister regarding his department, and, unless the question cannot be answered without detriment to the public good, he must receive an answer. An interpellation is a special type of question. It does not require notice and it is usually followed by a debate. The interpellation is a challenge to the policy of government on a definite point. A vote is as a rule taken to decide the issue. The result of this is that ministers are frequently taken by surprise, often on minor points, and by a mere chance or trick are defeated on the vote. Resignation follows, and the ministry is replaced by another, which is subject to the same procedure. Owing to the multiple party system, ministers as a rule have not a homogeneous party behind them, so that surprise votes are easily arranged by discontented members.

The Judicial System.—The judicial system of France has two distinct branches—the ordinary judicial system and the administrative law system. The ordinary judicial system has two classes of courts (*a*) civil and criminal, and (*b*) special, which includes courts dealing with purely commercial cases.

In the first class of the ordinary courts, the lowest tribunal is that of the Justice of the Peace. Justices of the Peace

are appointed, and removable by the President. Each canton has a Justice of the Peace, whose jurisdiction, both civil and criminal, is exercised within definite limits. As a criminal magistrate, he presides over the police court, the lowest criminal court. Graver criminal cases are tried by the correctional courts which consist of three judges, with no jury. Such cases are first secretly examined by an examining magistrate (*juge d'instruction*) who may either dismiss the case or commit it for trial. In civil cases involving small amounts, and in petty criminal cases, no appeal lies from the Justice of the Peace to the higher courts. In certain urgent cases, or cases requiring local knowledge, he has wider jurisdiction. In more important cases appeal lies from him to the courts of first instance, or arrondissement courts. Justices of the Peace have to try their best to reconcile parties: no suit can be brought before the next grade of court till the Justices have been unsuccessful in bringing disputants to an agreement.

The next grade of court is the courts of the first instance or arrondissement courts. These exist in practically every arrondissement. They are courts of appeal from the Justices of the Peace, and have original jurisdiction within certain prescribed limits. Appeal lies from them to the court of appeal. The courts of the first instance have a president, one or more vice-presidents, and a variable number of judges. A public prosecutor is attached to each court. The next stage in the judicial system is the court of appeal. In all there are twenty-six courts of appeal, each of which has jurisdiction over an area varying from one to five departments. Each appeal court is organised in sections. The head of the whole court is the president. These courts hear appeals from the lower courts, and have original jurisdiction in a few matters, such as the discharge of bankrupts. Another function of these courts is to decide whether criminal cases are to be tried by the lower courts or the assize courts.

Assize courts are held every three months in each department. The assizes are presided over by a judge or "councillor" of the courts of appeal. The assizes try the more serious criminal cases. At these courts there is a jury of twelve, as in the English system. Juries decide on facts only; the application of law is left to the judges.

The highest court in France is the Cassation Court, or the court for the reversal of appeals. It sits in Paris and is

divided into three sections, the Court of Petitions, the Civil Court, and the Criminal Court. Each section is presided over by a sectional president, the head of the whole court being the first president. The Cassation Court hears appeals from all lower courts (except the administrative courts).

Commercial courts are established in large towns to hear commercial cases. The judges are chosen from the leading merchants. If there is no commercial court, commercial cases are heard by the ordinary courts of first instance. Other courts (courts of arbitrators) are sometimes established in industrial centres to deal with industrial disputes.

The judges in France are appointed by the President (which means the Minister of Justice) for good behaviour. They can be removed only by a decision of the Cassation Court constituted as the Superior Council of the magistracy.

Administrative Courts.—Administrative courts exist to try cases arising in the course of administration. The supreme court is the Council of State, which is presided over by the Minister of Justice. Its members are all nominated by the president, and its duty is to give an opinion on all questions referred to it by the government. It is the final court in administrative suits. This court also prepares rules for the public administration. There are other administrative courts, the prefectural councils. Between the ordinary law and administrative law courts there is the Court of Conflicts. Its function is to determine the jurisdiction to which a given case belongs, and it is composed of members of each type of court.

3. LOCAL GOVERNMENT IN FRANCE

The French system of local government is the most symmetrical in the world. The administrative divisions were created by the Constituent Assembly at the Revolution. This Assembly swept away all the old divisions with their historical complexities and set up a new machinery based on administrative requirements.

General Divisions. The Department.—For purposes of local government, France is divided into *départments, arrondissements, cantons* and *communes*. The department is the supreme division. The arrondissements, cantons and communes are only sub-divisions of it. The chief official in the department is the prefect, who is appointed by the President

and is the direct agent of the central government, and has very wide functions. He supervises the execution of the laws, issues police regulations, nominates subordinate officials and exercises a general control over all the officials in the department. He is the recruiting officer and also chief educational officer of the department. He is the agent of the local legislative body, the General Council of the department, but in reality he controls the work of the Council, as it is only through him that the Council can have its resolutions carried into effect. The acts of the prefect may be vetoed by a Minister, but no minister can act independently of him. He must act through him.

The General Council of the Department.—The General Council of the department is elected by universal suffrage, each canton contributing one member. Councillors are elected for six years; one-half of the membership is renewed every three years. The Council has two regular sessions every year; these sessions are limited by law to fifteen days for the first and one month for the second. Extra sessions of eight days each may be called by the President at the written request of two-thirds of the members. If the Council sits longer than it is legally entitled to, it may be dissolved by the prefect: if it goes beyond its legal powers, its acts may be set aside by presidential decree. The members are not paid for attendance, but they are fined for absence.

The powers of the Council are strictly limited. Its main duty is to supervise the work of the department. It has little power of originating legislation, but its decisions on local matters are usually final. Its chief functions are to assign the quota of taxes (the amount and the source of taxes are determined by the Chamber of Deputies in Paris) to each arrondissement; it authorises the sale, purchase, exchange, or renting of departmental property; it superintends such property; it authorises the construction of new roads, railways, canals, and bridges, it votes the pay of the police, and generally gives advice on local matters to the central government. Political questions are rigorously excluded from its scope.

The Arrondissement.—The next division, the arrondissement, is the electoral area for the Chamber of Deputies. The head of the arrondissement is the sub-prefect. His powers are more limited than those of the prefect, but, like the prefect, he is the representative of the central government. There is

a district (arrondissement) council, to which each canton sends a member chosen by universal suffrage. The arrondissement has neither property nor a budget of its own, so its chief function is to allot to the communes the share of the direct taxes imposed on the arrondissement by the General Council.

The Canton.—The canton is purely an administrative division. It has no administrative organisation of its own. It is the electoral district from which members are chosen for the general and district councils. It is the area of jurisdiction for Justices of the Peace. It is also a muster district for the army.

The Commune.—The commune is the primary unit of French local government. Communes are both rural and urban. All towns are communes. The chief magistrate in the commune is the mayor. The mayor, unlike the officials of other local areas, is elected, not nominated. Mayors and deputy mayors are elected for four years from, and by, the members of the municipal council. Mayors are usually assisted by deputy mayors, the number of whom varies according to the population of the commune. Thus in a commune of 2,500 inhabitants there is one deputy; in a big city like Lyons seventeen deputies are allowed. The mayor is, first, the agent of the central government. Once he is elected, he becomes responsible not to the council which elected him but to the central government. He and his deputies may be suspended for one month by the prefect, or for three months by the Minister of the Interior. All his acts may be set aside by the prefect or Minister of the Interior. He may even be removed by the central government.

Second, the mayor is the executive head of the municipality, and as such he is responsible for the supervision of municipal work and services. The municipal council is elected by universal suffrage. Its numbers vary according to the size and population of the commune, and it decides on affairs affecting it. Its decisions become operative a month after they are passed, save in matters which transcend the interests of the commune, when the prefect, or general council, and, in cases, the President must approve. The council also chooses communal delegates for the election of senators, and draws up a list of assessors, from whom the sub-prefect selects ten, for the allocation of taxes among tax-payers.

The meetings are presided over by the mayor, except when his own accounts are discussed, and then the meeting is open to the public. Sessions last fourteen days, with the exception of a financial session, which may last six weeks. It holds four regular sessions every year. The council may be suspended for one month by the prefect, or dissolved altogether by decree of the President, passed in the Council of Ministers. In the event of dissolution work is carried on temporarily by a small council nominated by the President till a new election takes place.

CHAPTER XXVI

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

1. HISTORICAL

General Remarks.—The government of the United States is the oldest and one of the most highly organised examples of federalism in the modern world. The makers of the American constitution had to face none of the difficulties which confronted the makers of federal Germany or the Federation of India. In Germany Bismarck had many historical questions to consider when he created the German Empire; but the Americans were able from the beginning to make a government which suited the country and people. They had not to consider the claims of local princes or the jealousies of old-established dynasties. Once they achieved independence, they were free to experiment with forms of government and to find out what was best for them. The present form of government is founded on the constitution of the 17th September, 1787, which was adopted after a series of experiments; but it is noteworthy that from the Declaration of Independence in 1776 to the adoption of the constitution a period of only eleven years elapsed, and the completeness of the new constitution may be judged by the fact that up to the present day only twenty-one amendments have been made.

The Early Americans.—In the early days of America, the

great majority of citizens were English colonists. Naturally, the early political institutions were English in character, though they were altered to suit the needs of a new country and to prevent the particular constitutional drawbacks which had forced the colonists to leave England. This English character of American institutions is one of the fundamental facts of American political life. It is true that the American population is now very mixed—it contains large elements of practically every European nationality, as well as Japanese, Chinese, and Africans. But even to-day the main stock of the United States is British by descent, and the political institutions of the country were originally adaptations of English models to American conditions.

Early Colonisation : Three Types.—In the first days of English colonisation there were of course no "states" or provinces as there are now. The colonists made homes for themselves where opportunity offered. These homes or settlements gradually expanded as the population grew. When settlements became sufficiently large to require definite organs of government, the colonists adapted the English forms of local government to their needs. One settlement adopted one form: another, another form. There was no uniformity of pattern. The New England colonies had one type, Virginia another, while Pennsylvania and New Jersey had a special type with characteristics of both the previous types. Thus there were three types—the New England colonies, the Virginian, or southern colonies, and the middle colonies.

The New England Colonies.—The characteristics of each type were mainly the result of the type of life led by the colonists. In New England, the colonies settled in townships. These townships grew up in large numbers, often close by each other. The New Englanders were a trading population, and trade meant inter-communication between townships. The earlier colonists, too, had left England because of the prevailing religious intolerance. The church, therefore, was to them an organisation of the highest importance, both spiritual and temporal. Each community had its church and school-house, and round the church in particular revolved the whole life of the inhabitants. The pastor of the church was the head of the community, and church membership was tantamount to citizenship. The townships were organised largely on the English pattern. The old English official desig-

nations were continued, but in all the townships the form of government was more democratic than in contemporary England. There was a general town meeting which all citizens (which usually meant all church members) could attend. This meeting elected the township officials, who were responsible to the town meeting. As towns multiplied, a certain amount of union became essential, but it did not destroy either the organisation or the independence of the townships. Through changes both great and small, the townships preserved their individuality, and to-day they are the basis of local government in the old New England states. With growing population governmental machinery became more complex. Counties were formed, for judicial purposes, and gradually areas of government were created, with suitable organisations, which later became the "states" of the American federal union.

The Virginian or Southern Colonies.—In Virginia, and the southern colonies, there was a marked contrast to the New England colonies. The southern colonists, in the first place, did not emigrate to America because of religious disabilities. They emigrated to a land which held a fairer promise of livelihood. They were merchant adventurers, sent out under a merchant company, the Virginia Company, which had been granted certain privileges by the Crown. In the second place, the type of colonist and the type of life were both different. In the southern colonies vast areas were available for agriculture. Both the climate and the soil were different from those of New England, so that from the beginning the southern colonies resembled the counties, just as the northern colonies were like the towns, of England. In the south the county type of life was reproduced. The organisation of government was on the English county plan, with the lieutenant (the equivalent of the English lord-lieutenant), who was appointed by the governor (who, in his turn, was appointed by the Company), the sheriff, and the justices, the equivalent of the English J.P.'s. The settlers lived under an ordered government just as they did in England. They recognised an established or state church, in marked contrast to the "free" churchmen of New England. Not only so, but they reproduced the aristocratic tone of English country life, the survival of the old feudal system. Social gradations were as marked as in England; the owner of a plantation took the

place of the English squire. The population was mixed. The settlers were of various social grades, but they continued in the same old English relationship. The ordinary routine of English country life was observed as far as the new conditions would allow. Pride of family and descent—many noble families emigrated to Virginia, particularly after the Civil War—was as markedly present in Virginia as it was absent in New England. Later this difference led to the American Civil War. Theoretically the war was fought on the question of slavery—for the introduction of slavery in the south had led to still more social distinctions. Actually the war was the climax of a complete difference of outlook between the old aristocratic type of settler and the democratic settler of the north.

The southern colonies were all governed much on the same pattern. At first a governor was nominated by the Company, with a council which included the chief officials of the colony. The Company governor was afterwards replaced by a royal governor or governor nominated direct by the Crown. The chief representative organ of government was the assembly. The assembly at first represented the plantations, but as time went on and the population grew, a more complex system of counties, towns and hundreds, on the old English pattern, developed. In its early days the assembly was known as the House of Burgesses. The old name "assembly" has continued to the present day; in most of the states the two houses of the legislature collectively are known as the "General Assembly."

The Middle Colonies.—In the third class, or middle colonies, there was a mixture of the characteristic elements of the other two classes. These colonies were mixed in population. Although the English dominated in the colonies, before their arrival Swedes and Dutch had a fairly strong hold. The type of life, again, was partly trading, as in New England, and partly agricultural, as in Virginia. Thus, they settled in townships, as in the New England colonies, and in farms or plantations, as in Virginia. They were democratic in the towns, and partly democratic and partly aristocratic in the counties. They had the characteristics of both north and south in their government organisations, i.e., townships and counties.

The Early Forms of Government.—Between the early

days of the American colonies and the Declaration of Independence, many forms of government and control were tried by England. In these days America seemed a very distant land, and much of the English policy was due either to ignorance or to a desire not to be troubled with the internal affairs of these far-off settlements. In all, three types of government were current in the seventeenth and eighteenth centuries, namely, government by charters, proprietary government, and direct government by the Crown. In each of these types necessarily the major share or power actually exercised rested in the colonies. The colonial organs of government increased in power as the population and importance of the colonies grew, but for many years the British Parliament almost completely neglected them. During the long period of neglect the colonial assemblies developed so far that, when the struggle with England came, all the colonies, whether northern, middle, or southern, and whether chartered, proprietary or direct, made common cause against the old country. The colonies had developed national feeling, and attempted repression led to independence.

Charters.—In the first, or chartered type of government, charters were given by the King to the colonies. They were given to companies, such as the Virginia Company and the Massachusetts Company. The three New England companies—Massachusetts, Connecticut and Rhode Island—each possessed a charter. The duration of the charter depended largely on how the company pleased the English authorities. The Virginia Company lost its charter soon after it was granted, while the Massachusetts charter lasted from 1629 to 1692. The Connecticut and Rhode Island Charters lasted throughout their existence as colonies, and ultimately became their state constitutions.

Proprietary Government.—Proprietary governments arose from charters granted to the colonies by private proprietors to whom the colonies had been granted by the Crown. Thus Maryland belonged to the Calvert family (Lord Baltimore), Pennsylvania and Delaware to William Penn, and New York to the Duke of York (afterwards James II.). The proprietors appointed the governors and councils, but as a rule granted a considerable measure of power to the people in their charter of government. Penn's charter to Pennsylvania, in particular,

was a notable expression of the liberal ideas of the day in respect to colonial government.

Direct Government.—Direct government by the English Crown meant that the governors and council were appointed by the Crown. These officials were responsible to the Crown, but in course of time the Crown had to grant a large measure of self-government to the colonies, especially as the colonists had the power of the purse. The royal governors, though in theory responsible to the Crown, in practice became responsible to the colonists.

The Process of Fusion.—The process of national fusion in America was slow. The colonists were mainly of the same race ; they spoke the same language ; their political and economic interests were similar. Yet they kept their governments strictly separate. Each government stood in practically the same relation to the English crown as its neighbour, but they each had separate governors, legislatures, officials and courts. Strange as it may seem, the one institutional bond of union in America was the English Crown. Some of the colonies, it is true, had united in a rough way to protect themselves against the American Indians, but it was not till 1765 that any definite movement for union took place, and even then only nine of the thirteen colonies took part. The occasion of this was a protest against taxation by the English Parliament, which later became the ostensible cause of the War of Independence. In 1774 began a number of inter-colonial "congresses." These congresses consisted of delegates from the states, each state having an equal voice. The official name of this government was "The United States in Congress assembled"—a title which has given the name to the country (United States of America) and to the legislature (Congress). In 1777, the year after the Declaration of Independence, Articles of Confederation were drawn up by the congress of that year, but they did not become law till 1781. These articles made the congress into a legal form of government. But the confederation had no real power. It was only an advisory body. It could not command the states, and such small executive power as it did have could be exercised only with the consent of the states. As an effective government it was impotent. The states had not yet shaken themselves free from the idea of local autonomy. The War of Independence had caused them to sink local jealousies for the

general cause, but once the war was over, the old jealousies re-appeared. To bring about union the present constitution was drawn up in 1787.

The Constitution of 1787.—The constitution was drawn up largely on English models, modified by American experience and the theory of the separation of powers. It set up a definite federal government, the executive, legislative and judicial powers being entrusted to separate authorities. The legislative power was vested in a Congress of two houses, a Senate, and a House of Representatives. The principle was accepted that the Senate should represent the states, and the House of Representatives the people proportionally. The executive power was vested in the President, whose position was much the same as that of the existing state governors. The judiciary was made independent of both the executive and the legislature. The individual state constitutions accepted the same arrangements. The powers given to the new government were definitely enumerated in eighteen items: the residue was left to the states.

At first the American constitution was looked on more as an instrument of convenience than as a national bond of unity. The states continued their old course, and did not wish either to have their independence encroached upon or to contribute much to the maintenance of this new form of government. Threats of secession were not infrequent, but the federal government, now on a secure legal foundation, gradually commanded the respect and allegiance of both states and people. Public opinion gradually turned from indifference to respect, from mistrust to faith, and from local to national patriotism. Circumstances other than political helped the union—particularly the rapid development of America westwards by means of railways. Struggles with England and Mexico further welded the economic and political interests of the people.

Slavery and the Civil war.—To complete national fusion, however, there was one great barrier—the existence of slavery. The planters of the south depended for manual labour on imported negro slaves. The northern labourers were free. When the southerner spoke of his nation he excluded the large population of slaves. As to the Athenians of old, his nation was a nation of freemen but not a nation for the total population. The northerners' nation was a nation for the whole population.

This difference, which was political, social and economic led to a desire on the part of the southern or slave states to have a separate government. The result was the War of Secession or American Civil War. The southern states were beaten, and in 1865, an amendment was made to the constitution abolishing slavery. The federal government had proved itself, and soon it became the organ of a homogeneous American nation.

Political Life.—One or two salient features of American political life may be mentioned. In the first place, it is to be noted that, though the basis of early American political life was English, the process of constitutional development was not the same as in England. The chief contrast is that America developed towards federalism, whereas England developed towards unitary government. But in the state organisation, as distinct from the federal, the development was similar. In both, the unit was a small community—such as the township and hundred. From these units the organisation rose step by step to the central government. Were the British Empire now to be organised on a federal basis, the parallel between it and the United States would be complete.

In the second place, the constitution of America is rigid; the constitution of the United Kingdom is flexible. This difference arose from the conditions of development in the respective countries. In America development was conscious, deliberate, definite, and, compared with England, quick. In England it was unconscious, accidental, and slow. The early Americans, not unnaturally, made legal safeguards for their liberties, for many of them had gone to America for the reason that no such safeguards existed in England.

In the third place, the spirit of American institutions and law, as well as the actual institutions themselves are English, and they have preserved their English character to the present day. In the constitutions English law and precedent were followed. In some cases English charters became state constitutions. Private law was mainly English. The chief differences lay in the abolition of class distinctions and titles, and in the freedom of the church. In public law the new constitutions reproduced the principles governing the relations of the English King and Parliament. The executive powers of the President were like the powers of the Crown. The constitution of the courts was similar to that of the English,

while the procedure was practically the same as in England. The chief differences lay in the federal form of government, and in the separation of powers.

In the fourth place, the United States is one nation, with a federal form of government. The individual states are constituent elements in the American nation. They have their own powers and privileges guaranteed by their own and the American constitutions, but they are part of the machinery of an organic union. The central government is supreme over all : the constitution of the United States is the supreme law of the United States as a whole and of its parts, just as the British Parliament is the legal sovereign of all the parts of the British Empire.

2. THE FEDERAL GOVERNMENT OF THE UNITED STATES

General Organisation.—The general organisation of the federal government is prescribed in the constitution, which says that the government of the United States shall be entrusted to three separate authorities, the executive, the legislative and the judicial. The constitution does not lay down details as to how these branches of government are to be organised or how they are to work. Details are fixed by ordinary legislation.

The Federal Capital.—The capital of the United States is Washington, which stands in the District of Columbia. The constitution-makers recognised that it would be necessary for the federal government to have a seat of its own, outside the jurisdiction of any one state. This seat was provided by the states of Maryland and Virginia in 1791 and was named the District of Columbia. This district is about sixty square miles in extent, and is really co-extensive with the city of Washington. It is governed directly by the federal government; three commissioners appointed by the President are responsible for the government. There is no municipal council, and the citizens have no right to vote either in national or in municipal matters.

Amendment of the Constitution.—As the fundamental law of the United States, the constitution was placed outside the reach of ordinary legislation. Special procedure was laid down as to its amendment. By the fifth article of the constitution it is enacted that amendments may be proposed either (*a*) when two-thirds of each house of the legislature (Senate and House of Representatives), shall think it necessary; or

(*b*) when the legislatures of two-thirds of all the states ask Congress to call a general convention to consider amendments, in which case the convention may propose amendments. For the adoption of an amendment Congress may choose one of two methods, either (*a*) submit the proposed amendment to the legislatures of the states, or (*b*) every proposed amendment may be submitted to state conventions specially called for the purpose. If three-fourths of the states agree to the amendment, the amendment is incorporated in the constitution.

Scope and Powers of the Federal Government.—The scope of the powers of the federal government is laid down in the constitution. Generally speaking the federal government has authority in general taxation, foreign relations, the army, navy, foreign and interstate commerce, the postal service, coinage, weights and measures, and crimes affecting it.

The Legislature.—The legislative power of the United States is vested by the constitution in a Congress, which consists of two houses, a Senate and a House of Representatives. The Senate, or Upper House, represents the States, the House of Representatives the people. The Senate represents the federal principle of government; the House of Representatives, the nation.

The Senate.—The Senate consists of two members from each state. These members used to be elected by the legislatures of the state, but, as the result of an amendment to the constitution made in 1913, they are now elected by popular vote. Unlike the members of the Bundesrath in the old German Empire, the members of the Senate are free to vote as they please. They are in no wise representatives of the state governments, nor were they so before 1913 when they were elected by the state legislatures. Each senator is elected for six years. He must be not less than thirty years of age, and must have been a citizen of the United States for nine years; he must also reside in the state for which he is elected.

Non-Legislative Powers of the Senate.—The Senate is the second chamber of the American legislature, but besides its legislative functions, it has the power to ratify or reject all treaties made by the President. A two-thirds majority of senators is necessary for the ratification of treaties. The Senate also has power to confirm or reject appointments

made by the President. Its members also constitute a high court of impeachment; its jurisdiction is limited to removal from office or disqualification for office. The sole power of impeachment lies with the House of Representatives.

Organisation of the Senate.—The President of the Senate is the Vice-President of the United States. The Vice-President is not a member of the Senate; he presides over it, and has a vote only in the case of a tie. This is the chief function of the Vice-President, except in the event of the death of the President, when he succeeds to the President's post. The Senate then elects a chairman from among its own members. The Senate makes its own rules of procedure, and these may vary from time to time. The most prominent feature of the organisation of the Senate is the committee system. The Senate is sub-divided into standing committees, each of which is appointed for a special purpose. When a measure comes up before the Senate, it is first examined by the appropriate committee. The committees in this way have come to have much power. Each committee is looked on as a specialist in its subject, and as such is able to guide the course of legislation on that subject. These committees examine subjects referred to them, and make recommendations to the Senate. Whereas in England ministers control the course of legislation, in the American Senate the standing committees are the guides. As the committees are elected from the Senate, it may be said that the Senate leads itself in legislation, as distinct from being led by ministers. The only drawback to the committee system—and sometimes it is a serious one—is that with the rigid separation of the legislative and executive branches of government in America, the committees are sometimes not able to secure from the executive departments the information or views they desire. They have the right to ask, but they do not always get full information. In the English system the minister not only controls the legislation in his subject but he is head of his own executive department, and as such can command all its resources.

The House of Representatives.—The House of Representatives is composed of members elected every two years by the people of the United States. The elections are by states, and no electoral district crosses state boundaries. Congress decides how many representatives there shall be;

with the limitation laid down by the constitution that there shall not be more than one for every thirty thousand inhabitants. The number of representatives is determined by the decennial census. On the basis of the 1930 census one representative was allowed for every 281,000 inhabitants. Representatives must not be less than twenty-five years of age, and must have been citizens of the United States for seven years. They must also reside in the state for which they are elected. Besides the normal representatives from states, each organised Territory (that is, a district managed by the federal government till such time as it reaches full state-hood) may send one delegate, who has a right to speak on any subject and make motions, but not to vote. These delegates are elected in the same way as ordinary representatives.

The Electorate.—The constitution provides that those who are qualified to vote for members of the larger of the two houses in the state legislatures may also vote for members of the House of Representatives. Generally speaking, this means all male citizens over twenty-one years of age. Neither race nor colour as a rule affects the right of citizens to vote. The details of the franchise laws, however, vary from state to state. Some states require a minimum period of residence; others require from aliens only a declared intention of becoming American citizens. Payment of taxes is necessary in some states; registration, in others. In some states negroes, though theoretically qualified for the franchise by the constitution, are debarred from voting by state law. By the nineteenth amendment to the constitution, carried in 1920, women are eligible for the franchise in the case of both federal and state legislatures on the same terms as men. In several states a test of literacy exists. American Indians who do not pay taxes are excluded from the franchise; as also are convicts, fraudulent voters, and others who are not desirable citizens.

Disputed Elections.—By the constitution, each of the two houses of Congress is the judge of the "election, returns, and qualifications" of its own members. Each house, with the concurrence of two-thirds of its members, may expel a member.

Organisation of the House of Representatives.—The House of Representatives, like the Senate, makes its own rules. Unlike the Senate, the president of which is determined by

the constitution, it elects its own president, who is called the Speaker. The Speaker of the House of Representatives used to wield enormous power. Most of the business of the House is conducted by committees, and these committees used to be nominated by the Speaker. Now they are elected by the House itself after the names have been selected by party committees, composed of party leaders. Being a large body, the House has not the same facilities for debate as the Senate has. Committees therefore do the work; the House perforce has to follow their guidance, and the committees thus are able to control much of the course of legislation. There are numerous standing committees of the House, the most important of which are the Committee on Appropriations, which deals with expenditure, and has special powers for controlling procedure, and the Committee on Ways and Means, which deals with questions of taxation. Another important committee is the Committee on Rules, which fixes the way in which the time of the House is to be used. The Speaker used to preside over this Committee, but now he is no longer even a member of it, though, of course, he still interprets the rules.

The Legislative Process.—The course through which a bill goes to become an act is similar to the English practice. A bill may originate in either house, but it must pass through both houses, and receive the signature of the President. If one house passes a bill and the other house amends it, the amended bill must be adopted by the house which first passes it before it proceeds to the President for signature. Bills for raising revenue must originate in the House of Representatives, but the Senate may propose amendments to them. A majority of members must be present in either house to form a quorum.

Powers of the President in Legislation.—The President has certain powers in relation to legislation. He may withhold his signature from a bill. If he does so, the measure may go back to Congress, and if it receives the votes of two-thirds of the members of each house, it automatically becomes law. The President is allowed ten days for the consideration of a measure. If he signs it, it becomes law; or if he takes no action within the time, it becomes law. If he returns the bill to Congress, with the message that he refuses to

sign, then the two-thirds majority is essential before it can become law without the President's signature.

Payment of Members and Disqualifications.—The salary of members of the Senate and of the House of Representatives and of delegates is 10,000 dollars a year, with allowances, based on mileage, for travelling expenses. No senator or member of the House of Representatives can be appointed to any post under the United States, or to any civil salaried post the salary of which is increased during his period as a member. No person holding any office under the United States can be a member of either house so long as he holds office. There is no religious test for any office under either the federal or the state governments.

The Executive: The President of the United States; The Presidential Election.—By the constitution, the executive power is vested in the President. His term of office is four years. The method of election is prescribed by the constitution thus: "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative or person holding an office of trust or profit under the United States, shall be appointed an elector." In every state the electors are chosen by the direct vote of the citizens. According to the constitution "the Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States." The state electors are elected on the first Tuesday after the first Monday in November of the year (every leap year) preceding the year in which the Presidential term expires. They meet at their state capitals on the first Monday after the Second Wednesday in the December following their election. There they vote by ballot; the votes are then sent to Washington and opened on the sixth day of January by the President of the Senate in the presence of both Houses of Congress. The candidate who has a majority of the whole number of votes cast becomes President. If no one has a majority, then the House of Representatives elects a President from the three highest in the list; the votes are taken by states—each state has one vote. The Presidential term used to begin on March 4th in the year following leap

years, but the twentieth amendment to the constitution ratified in 1933 advanced the date of inauguration to 20th January.

The Vice-President.—The Vice-President of the United States is appointed in the same manner and for the same term. His chief duties are (*a*) to take the place of the President in the event of the President's death, and (*b*) to preside over the Senate.

Qualifications for the Office of President.—According to the constitution "no person except a natural-born citizen or a citizen of the United States at the time of the adoption of this constitution, shall be eligible for the office of President: neither shall any person be eligible for that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States."

Limitation of Office.—Though there is no constitutional limitation to the number of times the same person may hold office, it has become an unwritten law that two periods of tenure is the maximum for which the same individual can serve as President.

The Party System in the Presidential Elections.—The election of the President depends on party votes. As we have already seen, the party elections are really the result of the stringency of the separation of powers in the American constitution. The party which returns the majority to Congress has the best chance of electing the President, so that in practice there is not likely to be friction between the legislative and executive branches of government. In practice what happens is that during the summer preceding the presidential election the parties hold national conventions composed of delegates from all parts of the United States. These conventions nominate their candidates for the presidency and vice-presidency. The state electors of the President are chosen by state party conventions, and the party which secures most votes in state elections is able to put its candidates into office at the final election. Thus the party conventions really are the most vital part of the election. The parties are unknown to the constitution.

Duties and Powers of the President.—As the chief executive officer in the United States, the first duty of the President is to see that the laws of the United States are faithfully executed. He is commander-in-chief of the army

and navy, and of the militia in the service of the federal government. He regulates the foreign affairs of the United States. He receives foreign ministers, and, with the assent of two-thirds of the Senate, can make treaties with other powers. He appoints and commissions all officers of the federal government. He can also grant pardons and reprieves.

The Powers of the Senate in Appointments.—By the constitution all appointments made by the President are subject to the advice and consent of the Senate. This proviso is really useless, as any act which limits the President's power can only be advisory. Not only so, but the constitution empowers Congress to remove from the superintendence of the Senate the appointments to all inferior positions, and allows it to place such appointments if it pleases solely in the hands of the President, or in the courts of law, or with the heads of departments. The confirmation of the Senate is necessary to the President's nomination for the appointment of ambassadors and of other public ministers, of consuls, of judges of the federal courts, of the chief departmental officials, of the principal military and naval officials, and of the principal post office and customs officers.

The "Spoils" System.—The method of appointment to executive offices in the United States has for many years been a very vexed question. The courts of the United States ruled that the right of appointment involved the right of dismissal, and this decision, combined with a law of 1820 which set a four-year term for many federal officials, led to the "spoils" system, by which Presidents were able to reward their party supporters with offices. This system dates from President Jackson's time, in 1829. The posts of the civil service became rewards for help at elections. The abuses of this system led to a Civil Service Act in 1883, which introduced the competitive system for the lower grades of office; but the filling of the more important offices was still left in the hands of the President.

The Presidential "Messages."—According to the constitution, the President "shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." This "message" of the President to Congress has become one of the most important

features of American political life. It is the chief constitutional means whereby the executive and legislature of the United States meet.

The constitution also gives to the President power on extraordinary occasions to convene extra sessions of both houses or of either house; and, if, in respect to the time of adjournment, he disagrees with them, he may adjourn them to such time as he may think fit.

The Ministers and Departments.—In the discharge of his duties the President is helped by his various ministers and departments of government. The main executive work falls on these ministers and departments; the President exercises only general oversight. The various executive departments are not provided for in the constitution: they are the creations of statute law.

The "Cabinet."—At present the executive work is carried on by ten departments, the heads of which are collectively called the Cabinet. They are, however, quite unlike the English Cabinet. They are not members of the legislature, nor are they in any way responsible to the legislature. They are responsible only to the President. The only connection they have with the legislature is the flimsy consent of the Senate that is necessary to the President's nomination.

The Departments.—The departments are:—

1. The Department of State, the head of which is the Secretary of State. It is the equivalent of the British Foreign Office.

2. The Department of the Treasury, the head of which is the Secretary of the Treasury. This Department, as its name indicates, deals with revenue, coinage, banking, the auditing of public accounts, etc.

3. The Department of War, the head of which is the Secretary of War. This department deals with the army, defence, military education, etc.

4. The Department of Justice, the head of which is the Attorney-General. This department deals with federal litigation, gives advice to the federal government, and is the head of all the United States marshals and district attorneys.

5. The Post Office Department, the head of which is the Postmaster-General. It deals with all postal business.

6. The Department of the Navy, the head of which is

the Secretary of the Navy. It deals with the naval forces, naval defence, education, etc.

7. The Department of the Interior, the head of which is the Secretary of the Interior. This department, the equivalent of the Home office in England, has many sub-departments among which are the census office; the land office (for management of public lands); the Indian bureau (to regulate the government's dealings with Indians); the pensions office; the patent office; the office of public documents; the office of the commissioner of railroads, which audits the accounts of certain railways which have government subsidies; the office of education, which collects statistics and information about education, with a view to its systematisation throughout the United States; and the management of certain institutions.

8. The Department of Agriculture, the head of which is the Secretary of Agriculture. This department collects statistics in matters concerning agriculture, prosecutes scientific research in diseases of trees, etc., supervises the weather bureau, and it has also a forestry sub-department.

9. The Department of Commerce, the head of which is the Secretary of Commerce. It regulates inter-state commerce, and is responsible for all activities connected with external trade.

10. The Department of Labour, the head of which is the Secretary of Labour. This department deals with all questions affecting labour, and the relations of labour and capital.

There are other offices, such as the Civil Service Commission, and the Commission of Fisheries, that have no representation in the Cabinet.

The Presidential Succession.—These officials are arranged in the order of precedence for succession to the office of President in case of the death, resignation, removal or disability of the President. The holders of office must satisfy the other presidential qualifications, of age, citizenship, etc., before they can succeed to the office.

The Federal Judiciary: Organisation and Powers.—The judiciary of the United States, according to the constitution, "shall be vested in one supreme court and in such inferior courts as the Congress may from time to time ordain and establish." The actual organisation of the courts is thus mainly a matter of state law. The powers of the federal

courts are given in more detail in the constitution. These powers are of two types—(*a*) those relating to the special questions over which the federal government has legislative and executive control, e.g., maritime and admiralty cases, and cases arising out of the constitutional law of the United States, and (*b*) those in which the parties to the suit more properly belong to the federal than to the state courts, e.g., in cases affecting foreign relations, or foreign ministers, or in cases where the state courts have incomplete jurisdiction. It is for Congress to determine how the courts are to be organised to carry out the general law of the constitution.

Organisation of the Courts.—The Judiciary Act of 1789, with its amending acts, is the basis of the present judicial organisation. The Supreme Court consists of a Chief Justice, and eight associate judges. It deals with appeals from inferior courts, and has original jurisdiction in cases affecting consuls, and foreign ministers, and in cases in which a state is a party. Next to the Supreme Court are the circuit courts, which are of two kinds—circuit courts and circuit courts of appeal. The circuit courts are held in different divisions or circuits of the country by judges of the Supreme Court sitting separately. The country is divided into ten circuits and each justice must hold a court in his circuit at least once in two years. The business of the Supreme Court is so heavy that the judges are not able to attend circuit courts regularly. In addition to the judges of the Supreme Court, circuit judges are appointed who hold court separately. The circuits are divided into ninety-one districts. Each of these districts has a district court. Sometimes a whole state counts for judicial purposes as one district. The districts are arranged according to the number of population and amount of work to be done, but no district crosses state boundaries. The district courts are the lowest of the federal courts.

Circuit Courts of Appeal.—The courts of appeal in the circuits were established to relieve the Supreme Court of part of its appellate work. A circuit court of appeal consists of one judge of the Supreme Court and two circuit judges, or one circuit judge and one district judge. One judgeship in each circuit is assigned for this work. The circuit court of appeal has final jurisdiction in certain matters, but in other matters, such as constitutional questions, conviction

for capital crimes, and matters affecting treaties, an appeal lies to the Supreme Court.

Other Courts.—There are other federal courts for special work. The Court of Claims determines the validity of claims against the United States in cases where no provision exists for their settlement. The United States Customs Court has jurisdiction in customs cases, and the Court of Customs and Patent Appeals hears appeals from the Customs Court on questions arising from the classification of goods under tariff legislation, and on rates of duty. It also hears appeals from decisions of the Patents Office.

The District of Columbia has its own judicial organisation, as also have the United States territories. The Supreme Court is the final court of appeal.

Appointment of Federal Judges.—The judges of the United States are appointed by the President with the advice and consent of the Senate. They are appointed for life, or to serve during good behaviour.

District Attorney and Marshal.—The district attorney and the marshal are both appointed by the President. The district attorney prosecutes all offenders against the federal criminal law, conducts civil suits on behalf of the federal government, and performs such other legal duties as his appointment as federal judicial officer may entail. The marshal is the executive officer of the federal, circuit and district courts. He issues and executes orders of the court, and effects arrests. His state equivalent is the sheriff.

Procedure.—The procedure of the federal courts as a rule is regulated according to the state in which the court is sitting. State procedure is followed, and state law is enforced where no federal law applies.

3. THE GOVERNMENT OF THE STATES

Federal and State Governments.—Just as the citizen of Bengal is more concerned with the government of Bengal than with the Federation of India in his everyday life, so for the control of the normal affairs of their lives, the citizens of the individual states in America are more interested in the state governments than in the federal government. The federal government deals with the greater matters of national life—with war and peace, foreign relations, etc.—and only in national crises or at periodic elections is the ordinary citizen

brought into personal contact with it. Certain broad facts must be kept in mind in this respect.

1. **Two Types of Constitutional Law.**—There are two types of constitutional law in the United States. First, there is the constitution of the United States. This is the supreme law of the land. Second, there are the constitutions of the individual states. Each of these is part of the sum-total of the constitutional law of the United States, but as the whole is greater than the part, so the constitution of the United States is greater than the constitution of any single state or any number of states. But the constitution of the United States is an integral part of the constitutional law of any one state just as the constitutions of the individual states are respected by the federal government where those laws do not clash. In the case of conflict the greater supersedes the less.

2. **Legislatures Non-Sovereign Bodies.**—From this arises the fact that, though the states have definitely guaranteed powers, their legislatures are non-sovereign law-making bodies. They have complete authority only within the limits granted by their own and the federal constitutions. There is only one sovereign body in the state—the United States.

3. **Powers of the States.**—The states were the original units of government in America. When the constitution was drawn up each state jealously safeguarded its own rights. To the states at the beginning of federal government the federal government was unreal and distant. They therefore kept to themselves all the powers they possibly could, consistent with the creation of a central government. To the central government was given only a strictly limited number of functions —those functions which must belong to all central governments, e.g., the conduct of foreign relations, matters of war and peace, coinage, customs, the post office, and the power to raise revenue to support itself. To the states were given the residue, with such limitations as were necessarily imposed by the grant of powers to the federal government. Thus the states were left with all affairs which affect one's normal, everyday life. They decide the qualifications for the right of the vote; they control all elections, including those for the President and Vice-President. They enact and execute criminal law, with some exceptions; they administer the prisons. The civil law, including all matters relating to the possession of, and transfer of property, and succession, marri-

age and divorce, and all other civil relations, the regulation of trading corporations, subject to the right of Congress to regulate inter-state commerce, the regulation of labour, education, charities, licensing, game laws—all are matters for the states. In addition to this, the states may act in those matters in which the central government may be empowered to act by the constitution and in which it does not actually take action. In some matters, e.g., regarding naturalisation and bankruptcy, the central government has only partial control.

4. **Admission of New States.**—Each state constitution must be republican in form, but it derives its authority not from Congress but from the people of the state. States may be added to the Union in two ways—(*a*) by means of an enabling act, which provides for the drafting and ratification of a state constitution by the people. (In this case a territory previously administered by the central government may become a state as soon as the conditions are fulfilled); and (*b*) by accepting a constitution already framed, in which case, admission to the Union is granted at once.

5. **Results of Formation of New Constitutions.**—In many of the newer state constitutions, much more has been included in the constitution than should really be included in purely constitutional law. A constitution should give the fundamental principles and organisation of government. But in many constitutions details are given regarding the management of public property, the regulation of public debt and suchlike. Such subjects belong properly to the sphere of ordinary legislation, but distrust of ordinary laws and lawmakers led the people to safeguard their "rights" by the constitution.

6. **General Results.**—Owing to the difficulty of amending the constitution of the United States, some constitutional provisions are now regarded as mistakes. Experience has shown that in matters other than those granted by the constitution to the central government, central would be better than local control. Some of the chief abuses of American political and social life have arisen from the "state" bias of the framers of the constitution. Particularly is this the case in marriage and divorce. While some states preserve the old stringency of the marriage law, others have relaxed it so far as to make both marriage and divorce almost farcical. The

diversity of law from state to state enables parties to obtain divorce with the greatest ease; one party sometimes obtains a formal divorce without the other party being informed. A similar lack of uniformity exists in criminal law, and in laws concerning debt. In taxation, too, much harm is wrought by lack of co-ordination. Industry and trade are sometimes hampered by ill-considered state laws. Investment of capital is discouraged, and in some states taxes bear much more harshly on certain types of employment than in others.

The remedy for these evils is more co-ordination or control by the federal government, but such control cannot be secured because of the difficulty of amending the constitution. The many abuses which have resulted from the lack of co-ordination in these important matters have led many thinkers to prefer the Canadian type of federal constitution, by which the states are given definitely enumerated functions, and the residue is left to the federal government.

The State Constitutions.—Each state has a constitution, like the federal constitution. It would be more correct to say that the federal constitution is like the state constitutions, for the former was drawn up on the model of the constitutions or charters of the thirteen original states which formed the United States.

Amendment of Constitutions.—The constitutions of the states can be amended only after a lengthy and difficult process, which varies from one state to another. In the case of a general revision, the legislature may call a popular convention, but the question of the calling of the convention must first be decided by the people. If the people agree, the convention is elected in the ordinary way. It considers the amendment, and if it agrees to the amendment, the amendment finally is submitted to the people for acceptance or rejection. Particular amendments may be proposed by the legislature, but in most cases the vote of the people is necessary for final adoption. Sometimes amendments must be accepted by two successive legislatures as well as by the people before they can be incorporated into the constitutional law of the state. In most cases more than a simple majority of the legislature is necessary.

Separation of Powers in the States.—Among much diversity of organisation in the state governments one feature is common—the separation of legislative, executive and judicial.

This separation is more stringent in the states than in the central government, and in some respects more harmful, e.g., in the election of judges by the people in order to avoid any possible subservience of the judiciary to the executive.

The Legislatures, Powers, Organisation, Procedure etc.—Each state has a bicameral legislature. Both the houses are elected on the suffrage basis already noted in connection with the federal government. The upper house is called the Senate, the lower the House of Representatives. Both together are usually known as the "General Assembly," but the lower house has different names, e.g., the House of Delegates in Virginia, and The Assembly in New York. The senates have fewer members than the lower houses, the electoral areas for senators being wider than those for representatives. Representatives are usually elected for two years, senators for four; one-half of the senate is renewed every two years. Both senators and representatives are paid the same; both must be citizens, though the minimum period of citizenship varies. Usually an age limit is set (senators from twenty-one to thirty, representatives from twenty-one to twenty-five). Other qualifications—such as residence in the state, or electoral district—are as a rule necessary.

Powers of Legislatures.—The legislatures of the states theoretically are competent to deal with all matters not reserved specifically for the federal government. But the state constitutions themselves have self-imposed restrictions, so that in certain states neither the federal legislature nor the state legislature can deal with some subjects. The state constitutions, further, frequently impose limits on the length of sessions, and contain rules for the conduct of legislation, even to great detail. All these limitations are meant to secure the interests of the people against any possible legislative tyranny. In most constitutions the arrangement of procedure and of other details is left to the houses themselves.

Organisation of State Houses.—The organisation of the houses in the majority of cases is like that of the federal legislature. The lower houses usually elect a Speaker as President. In the upper houses the equivalent of the Vice-President in the federal Senate is the lieutenant-governor. Bills are passed as in Congress, though there are local varieties in the amount or type of majority required. The standing committee organisation prevails in the state legis-

latures, just as in Congress, for the same reasons and with the same results. The two state houses have similar duties, though in some states money bills must originate in the House of Representatives. The Senates act as courts in cases of impeachment by the Houses of Representatives. The Senates, too, have in some cases the power to confirm or reject appointments made by the governors.

The State Executives.—The chief executive official in the states is the governor. He is chosen by the direct vote of the people over the whole state. The term of office varies from two to four years, but two states (Massachusetts and Rhode Island) elect their governors for one year only. The governor as a rule must be a citizen of some years' standing (the period varies from two to twenty years). Many states have lieutenant governors. All have secretaries of state, whose duties are the keeping of state records, the registration of the official acts of the governor, keeping and affixing the state seal, keeping records of titles to property, and other duties such as appertain to a public record office. Other officials are the state treasurer and the attorney-general, whose duties are denoted by their names, the comptroller, or public accountant, under whose warrant the state treasurer pays out public monies, the auditor, and the superintendent of education. The number and functions of state officials vary from state to state. In a few states councils are associated with the governors.

Method of Choice, Functions, etc. of State Executive.—Like the governors, the state officials are elected by the people. In this respect there is a marked difference between the federal and the state practice. The President of the United States himself nominates his Cabinet or chief officials. In the states, the officials are elected by the people, and are largely independent of the governor. The governor therefore is not the "executive" in the same sense as the President: he is only a part of the executive, with little or no control over the other parts of it. In the states all the officers theoretically serve the people. Their responsibility from the governor downwards is to the people, and to the law of the state. The only method of removal from office is impeachment before the upper house of the legislature by the lower house.

Peculiar Character of Executive Work in the States.—

In the American states the central offices of government do not control administration as in other countries. They are supervisors only. The real work of administration is done by the officials of local bodies. Even in education, which usually is looked on as requiring much central co-ordination and control, the state superintendent of education often is merely a supervisor. The real powers in education are the local authorities.

Powers and Duties of the Governor.—Thus the governor has very little real power. He is the nominal more than the real administrative chief. His duty is to see to the faithful administration of the laws, as far as his powers allow. He is the commander of the state militia. He has to inform the legislature regarding affairs in the state and he may recommend measures. He cannot present bills to the legislature, though, in some states, he presents estimates. On the requisition of a certain number of members, he may call extra sessions of the legislatures. In all but two states the governor has a veto on legislation, but his veto may be overridden by the two houses, usually by a special (two-thirds or three-fifths) majority. He has certain powers of clemency, of granting pardons, remitting fines, etc. His power of appointment, as we have seen, is small.

The State Judiciary.—The judicial system of the states is quite distinct from the federal judicial system. Each state has its own judicial system, with a complete organisation and its own procedure. The only effect federal government has on these courts is the limitation of subjects which may be dealt with by the state courts.

The organisation of the state courts is so varied that only a general outline can be given here. (1) The lowest courts are those of Justices of the Peace, or, in cities, police judges. They have jurisdiction over petty cases, both civil and criminal; they conduct enquiries in graver offences and commit prisoners for trial in higher courts. (2) The next grade is the county or municipal courts. They hear appeals from the lower courts, and have wider jurisdiction in civil and criminal cases. (3) Circuit courts, which hear appeals from both the lower grades and have a wider jurisdiction than the county or municipal courts. Sometimes they have permanent judges: sometimes circuit court cases are taken by judges of supreme courts on circuit. (4) The highest courts are

the supreme courts, or courts of final appeal, in each of which there is a chief justice and associate judges. These courts are appellate only.

There are many varieties of this general scheme. In some states there are courts for special purposes, especially probate courts, for the administration of estates, the proof of wills, etc.

Appointment of Judges.—One of the most distinctive features in the state judicial organisation is the method of appointment. As a rule judges are elected by the people. In some cases they are elected by the legislature; in other cases, they are appointed by the governor with the advice and consent of the senate. The term of appointment varies from two years to tenure during good behaviour. In regard to qualifications, only a few states insist on members of the legal profession being chosen. Generally members of the legal profession are appointed. Lower age limits (from twenty-five to thirty-five years), residence, citizenship and other such qualifications are usually prescribed.

Ministerial officers of the courts are also elected; even court clerks are elected in some states. Elections are local, i.e. confined to the areas served by the courts, except in the case of judges of supreme courts, who are elected by the whole state.

4. LOCAL GOVERNMENT IN THE UNITED STATES

General Features of Local Government.—It is impossible to give here more than the general features of American local government. The local varieties of organisation are very numerous, but American local government lacks the complexity of organisation that exists in England. This is largely due to the fact that the evolution of American local government was a conscious process. Areas were established for definite ends and purposes, and, though the original plan was borrowed from England, the makers were free from the historical precedents which make the English system so complex.

Certain salient features of American local government may be noted.

1. **Wide Scope.**—In the United States both the scope and the freedom of action given to local authorities are great. While the law is centralised and co-ordinated, the

administration of the law is left very largely to local authorities. Local government is thus the most important branch of American government in the everyday affairs of life. The duties of local authorities are wide. Police, jails, sanitation, education, libraries, poor-relief, communications (roads and bridges), the assessment and collection of taxes, the licensing of trades, the lower grades of the administration of justice, are all administered by the local authorities under the general guidance set down in the laws of the state.

2. **Mainly Executive.**—Owing to the legal centralisation, local legislative bodies are not common. The local authorities are in the main executive.

3. **Limited Powers of Legislative Bodies.**—Where there are local legislative bodies, they are strictly circumscribed by their charters, just as the state legislatures are limited by their constitutions.

4. **No Central Controlling Body.**—In America there is no equivalent of the English Ministry of Health. The central governments enforce the state-law by means of the courts.

Organisation of Local Government.—Three main types of organisation of local government may be enumerated:

1. The township type, which we have seen to be characteristic of the New England states.

2. The county type, characteristic of the southern colonies.

3. The compound type, which is characteristic of the middle colonies.

With the expansion of America westwards, the type of local government followed the predominant type of settler. Where the settlers were mainly from the New England states, the township was predominant: where they came mainly from the southern colonies, the county was the prevailing unit. But in most cases the compound type was adopted, especially in the middle and north-western states. In these states immigrants from the eastern states combined what they regarded as the best qualities of their own systems. In the western states the same mixed type prevails. The later states of course had the advantage of the experience gained by the early ones, and were able to establish the type of experience proved best.

The Tewnship.—In the township, the chief authority is

the town-meeting, which is composed of all the citizens of the area who have a vote. The town meeting assembles once a year, or oftener, if occasion demands. The town meeting elects all the local officers—the "select men" (three to nine in number, according to the size of the town), who are the general executive authority, the town clerk, treasurer, assessors, school committee, library trustees, constables—every official, in fact, necessary to transact the business of the area. These officials are responsible to the town-meeting, which examines their accounts and votes their supplies. The town-meeting is presided over by a "moderator."

This is the type of New England township, where the township preceded the county. The county in New England was formed out of the townships, and is confined to its own functions, which are partly judicial and partly administrative. The sphere of work of the county is quite separate from that of the township. But in other states the township is more integrally connected with the county. The county in these was often the original unit: the township was introduced for administrative convenience. In the north-west the township was established for school purposes. The government surveyors mapped out the land in blocks of thirty-six square miles, reserving as a rule one square mile for school endowment. This block was called a township, and the endowment section came to be administered on the township basis.

The organisation of the township outside New England differs according to the development and vitality of the township. Sometimes there is a town meeting: sometimes the town meeting is replaced by popular election to the administrative posts. The system of select men of New England does not as a rule exist in other states. Their equivalents are supervisors, and boards of supervisors. The number of officials varies with the size of the township and the work to be done. In some of the southern states (as in Virginia) the township system was tried and abolished, while in others it exists in only a very minor way.

The County.—The county (the idea was borrowed from the English shire) is the most suitable unit of local government for a widespread farming population, and it was naturally adopted in the southern states. It originally was a judicial area, but later it was made the area for all local

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administration. It has its own officials, the heads of which are the county commissioners. The ordinary officials—treasurer, auditor, superintendents of roads, of education, etc., who are elected usually by popular vote, act under the county commissioners. It has also a judicial organisation (sheriff, coroner, attorney, etc.). The functions of the county are the supervision of education, roads, bridges, jails, and such other matters as fall within its area.

The Compound Type.—Where township and county exists side by side, there is much variety in organisation. In some areas the county authority is composed of the heads of the township; in others, the townships choose the county authorities. The division of functions varies also from place to place. Where the two organisations co-exist, the predominant type (township in New England, county in the south) has more power and importance.

School Areas.—In both the county and township systems, there are sub-divisions into school areas, where district directors or trustees are appointed to look after school interests. These trustees or directors are the most powerful agents in the whole state in the administration of education. Such localism has proved harmful to education, as it has prevented proper co-ordination of method, and the enforcement of standards of qualifications for teachers.

Powers of Taxation.—The local units are circumscribed, either by constitutional or by statute law, in the amount of taxes they can raise. As a rule they can tax only up to a given percentage of the value of property. The county has to raise the taxes voted by the state legislature, for state purposes, as well as the county taxes. Where the township exists, it has similar powers and duties. The assessment varies from county to county and from township to township, and boards of equalisation have been created in some cases to secure equality of treatment between the areas.

Municipal Government.—Where villages and towns have grown up, county and township are superseded by municipal organisation. In smaller urban districts, villages, boroughs or towns (the names vary from state to state) may be incorporated through application to the courts of law, if the electors can prove that the necessary conditions can be fulfilled. Such urban authorities take over the old township functions, though in some states they continue to be part of the county,

and pay county dues. In some larger towns the urban area has swallowed up the county area altogether (as in Philadelphia and New York). In Virginia the urban areas are definitely separated from the counties.

In the case of larger cities, a special act is necessary for incorporation. Hence arises the variety of American municipal government. In England there is one Act (the Municipal Corporations Act) under which urban areas may be incorporated as municipalities. American cities have wider powers than the smaller areas of local government, and, of course, a much bigger organisation. They also often have a separate judicial organisation. The names of the officials (mayor, aldermen, etc.), are the same as in England. In most great cities there are two chambers—a board of aldermen, and a board of common councilmen. In New York State, most of the cities have only one house—either a board of aldermen, or a common council.

CHAPTER XXVII

THE GOVERNMENT OF GERMANY

1. HISTORICAL

The End of the German Empire.—Prior to the Great War, the system of government in Germany was federal in character. The German Empire was sometimes described as a Federal Empire. When the German Emperor abdicated in 1918, the Empire came to an end. The government was taken over by a Council of People's Commissioners, which, in January 1919, summoned a National Assembly, elected by all Germans, men and women over twenty years of age. This Assembly met at Weimar and adopted a Constitution of the Republic which was promulgated in August of the same year. This constitution, known as the Weimar constitution, abolished the Imperial system (though the old name Empire (*Reich*) was maintained) and made fundamental changes in the legislatures and executive governments of both the *Reich* and the states. The federal system

continued, but with the advent of the Nazi party, Germany was made a unitary state. In theory, the Weimar constitution is still in existence, but actually many of its most important operative clauses have been superseded.

Apart from the cycle of political change, to the student of constitutional history and of Political Science, the main interest in recent German history lies in the German federation, as it was in the days of the Empire. Since the Empire disappeared, German constitutional and political conditions have been too unstable to admit of detailed study in this volume.

Development of Germany: The Growth of Independent States.—Germany developed from her frontier inwards. Most states develop from their frontier outwards. In the early years of the seventeenth century, the Electors of Brandenburg acquired the Duchy of Prussia on the Baltic and the Duchy of Cleves on the Rhine. These two duchies are the boundaries of what later was Prussia. Within these boundaries there was a large number of smaller states, so many, in fact, that, as one writer says, in the 18th century "the whole map of Germany, was a mass of patches of different colours mingled together in a bewildering confusion." Many of these states were small, and some were composed of parts which were not contiguous. This system was the result of feudalism. The heads of the states had acquired lands at different times in various ways. The lands thus acquired had been divided and subdivided among the families of the owners, hence the extraordinary subdivision. The Church too added to this subdivision. The Church owned lands in the same manner as private individuals.

The Grafs.—Under the old Frankish monarchy the king used to appoint local officers called grafs, who were agents of the king and as such wielded enormous power. Great as their powers were, they could not interfere with the great landowners of the territories over which they ruled. These landowners were practically independent, and the grafs had to exercise their authority round, but not over them. In this way a two-fold authority developed, viz., grafs and proprietors. In the course of time these two officers coalesced. Grafship became hereditary and the grafs usually were the landed proprietors, or if the graf was not originally a landed proprietor, he received a grant of land for his

services. Grafs thus became territorial magnates and territorial magnates became grafs. This led to the conjunction in one person of the old territorial independence and the delegated authority of the king. By the thirteenth century Germany was owned by the king, princes, grafs and barons (the old landed proprietors). The bishops and abbots were also extensive landowners.

Mark-Grafs.—Still another office helped the growth of local independence in Germany, the office of the mark-grafs. The mark-graf was the defender of the frontiers or boundaries. As a rule he was a military commander with an army. Not only did he defend but he also extended the frontiers by conquest. The mark-graf was essentially an official of the king, in command of the king's army. In the course of time the mark-grafs became so powerful that they virtually became kings. Thus Brandenburg and Austria became independent. Austria was the East Mark, the boundary against the Huns.

After Charles the Great.—After Charles the Great, whose authority kept his possessions together, these small princes of Germany became practically independent. The name Empire persisted through several houses, the last and strongest of all being the Austrian Hapsburg, which came to an inglorious end in 1918. The successors of Charles the Great were unable to keep the vast possession of Charles's empire together, and in the course of three reigns, the basis had been laid for the emergence of hundreds of independent principalities.

The Cities.—In the meantime the growth of trade had caused great cities to spring up, such as Hamburg, Bremen and Lubeck. These cities were troublesome to the Emperor and he solved the problem of their government in one of two ways. Either he placed them directly under his own government or he delegated his powers to an over-lord, who conducted the government in his name. The cities preferred the first of these methods, because the king was unable to take a close personal interest in them, whereas the over-lord, who was on the spot, guided and directed them according to his own ideas or to the orders of the Emperor. In the thirteenth century they were strong enough to become free cities. They owned allegiance to the Empire, but they received extensive powers of self-government. The over-lord

was withdrawn and the cities sent their representatives to the Imperial Diet.

Prussia.—Among the many states in Germany, one stands out prominently, viz., Brandenburg or Prussia. The growth of Brandenburg as a unified state is due to an enactment made in the middle of the fifteenth century, which forbade the splitting up of the kingdom amongst the different electors. Whilst the neighbouring states were continually subdivided, Brandenburg was held together under one monarchical house. Gradually it became the leader both in size and in power. In the fifteenth century the mark-grafship of Brandenburg fell into the hands of the Hohenzollerns. Henceforth it was known by the name of Prussia. After the Thirty-Years' war, in the middle of the seventeenth century, Frederick William, the Great Elector, extended his dominions considerably, making Prussia bigger than any other state of the Empire save Hapsburg Austria. The Great Elector's grandson, Frederick the Great, added more territories, doubling the population of the kingdom. Then came the Napoleonic wars, which checked its growth. Napoleon suppressed a large number of the smaller states, including the ecclesiastical ones. Hoping to break her power, he combined them into the Confederation of the Rhine and split Prussia into two. The Confederation neither served Napoleon's purposes nor did it last any time.

The Results of the Napoleonic Wars.—Napoleon both directly and indirectly was the cause of the growth of the German Empire. In the first place, his campaigns created a sense of common interest and unity amongst the German principalities or states. In the second place, he created in Germany the organisations which later developed into the Empire. In the third place, after the final defeat of Napoleon, Germany was reorganised by the peace treaty, the Treaty of Vienna.

The Confederation of the Rhine.—After Napoleon's downfall, the states, thirty-nine in number, were organised in a loose confederation. This confederation in no sense created a German state. Each state remained independent except for matters affecting its internal and external safety. The central organ of the Confederation was the Diet, which met at Frankfort. It was composed of delegates or ambassadors from the individual states, who voted according to the in-

structions received from their own governments. The nominal powers of the Diet were fairly wide. It was empowered to declare war and make peace, to organise a federal army, to enact laws, to carry out the constitution of the confederation and to decide disputes between the states. But it had no executive power except through the states. If a state refused to obey the order of the Diet, the only procedure the Diet could adopt was to ask the other states to use force. The likelihood that the other states would obey the Diet's request was problematical, for the confederation was not organised on a basis of equal rights. Two states, viz., Austria and Prussia, controlled the whole business of the union. Austria was permanent president, and Prussia permanent vice-president.

Subsequent Development. The Frankfort Parliament.—The chief difficulty in the way of federal union in Germany was the number of states, and more particularly the dominating power of Prussia and Austria. In spite of the new sense of nationality created by the Napoleonic wars the process of union in Germany was slow and difficult. In the years 1848 and 1849 the national spirit in Germany was strong enough to cause the summoning of a national parliament, elected by universal suffrage. It met at Frankfort and formulated a constitution. The imperial crown was offered to Prussia, but the parliament wasted so much time in carrying out its ideas that Austria had resumed leadership.

The Policy of Bismarck.—The whole of the subsequent development of Germany, until it was definitely organised as the German Empire, centred round one man, Bismarck. Bismarck recognised that if Germany were to be united either Prussia or Austria must renounce its leadership. As a Prussian, he naturally decided that Austria must be put outside the union. Bismarck first persuaded Austria to join Prussia in seizing Schleswig and Holstein from Denmark in 1864. He then quarrelled with Austria over the division of these new territories. War was declared and Austria was completely defeated in the short war of 1866.

The North German Confederation.—Now that Austria was definitely out of leadership, Bismarck set himself to organise a unified Germany under Prussia. His first intention was to include all states except Austria, but France compelled him to stick to the territories north of the river Maine.

Compelled to do this, Bismarck decided to enlarge his boundaries by including the recently seized territories of Schleswig and Holstein. By incorporating them along with the other states of Prussia he created the North German Confederation, of which the King of Prussia was president. There were to be two legislative chambers, one, the Reichstag, to be elected by universal suffrage, the other, the federal council or Bundesrath. This federal council was practically a reproduction of the old Diet. It was composed of ambassadors from the different states, but it had more extensive powers.

The Franco-Prussian War.—The North German Confederation left several powerful independent states, south of the Maine, viz., Bavaria, Wurtemberg, Baden and Hesse. These might have remained independent, or if they had cared, could have formed a union by themselves. Austria, of course, was left out altogether. But the Franco-Prussian War of 1870 raised the feeling of all communities in Germany to such a pitch that the local prejudices of southern states were swept away; all were eager to join to form a unified Germany. To compensate for their loss of prestige, each received special inducements and privileges to join the Union. Thus in 1870 the Confederation became the German Empire. The president of the Confederation became the German Emperor, and in 1871 the constitution of the German Empire was drawn up.

2. THE GOVERNMENT OF THE GERMAN EMPIRE

The German and American Federal Systems.—The German Empire was a federal union. Its special characteristic was the possession of wide legislative and restricted executive powers. It differed in many respects from the type of federalism in the United States. In the United States the executive power is divided between the central government and the governments of the states. The central government has its own executive authority for the execution of the federal laws; for example, if Congress enacts a tariff law, federal officials collect the duties. The federal courts also decide legal cases that arise under the federal laws. In Germany the federal government had much wider power in legislation. The power included what in America belongs to the central government and also much that belongs to the state governments. Beyond dealing with such matters of

national importance as the army and navy, foreign affairs and customs, the central legislature of the German Empire dealt with such domestic matters as canals and roads, as well as the whole domain of ordinary civil and criminal procedure. On the other hand, the administrative or executive power of the Empire was very limited. The Empire thus was mainly a legislative and supervising authority, except in matters relating to the army, navy and foreign affairs. In tariff matters the imperial legislature made laws and appointed inspectors, but the administration was carried out by state officials. In the case of a state refusing to carry out federal law, or directly opposing it, the Federal Council or Bundesrath was the deciding authority. If a state persisted after the decision of the Bundesrath in opposing imperial law, then the Emperor had to take action against the state.

The Position of Prussia.—In the German Empire there was pronounced inequality in the size of the states. In a federal union the states, if possible, should be equal in size and power. In the United States no state is so much bigger or more powerful than the others as to be able to dominate them. In the German Empire, Prussia was so powerful that it was able to plan the federal constitution in its own favour and subsequently to control the whole government of Germany. Prussia, as has been said, ruled Germany with the help of the other states. The component parts of the German Empire were so unequal in area, population and power that equality of treatment could not be expected. The larger states would never have joined in a federal union with the smaller states, had they been given equal treatment. Prussia, for example, had about three-fifths of the total population of the Empire as well as the strongest army : to it, accordingly, fell proportionate privileges.

Privileges of Prussia.—These privileges were great. (1) The King of Prussia had the perpetual right to be German Emperor. (2) Prussia was able to prevent any change in the constitution. Fourteen negative votes in the Bundesrath defeated any motion for a change of the constitution and Prussia controlled seventeen votes. (3) Prussia was able to veto all proposals for making changes in the army and navy, and the fiscal system. The constitution laid down that in this question the vote of Prussia, if cast in the Bundesrath in favour of maintaining the existing system, should be deci-

sive. (4) Prussia possessed a casting vote in the case of a tie in the Bundesrath ; and (5) Prussia carried the chairmanship of the standing committees in the Bundesrath.

Other Privileges.—Prussia possessed other constitutional privileges as the result of private agreements with smaller states. The smaller states were free to make agreements or treaties with each other in regard to affairs under their own control. Thus when the North German Confederation was formed, the military system prevalent in Prussia was introduced into the other states. When the constitution of the Empire was made, it was provided that the military laws should be made by the imperial government. The Emperor was to be the commander-in-chief. He was to select the generals in command of the state armies and to approve all the appointments of other generals. The appointment of inferior military officers was left to the states. But in many cases the smaller states gave up the right of such appointments to Prussia. As a return for such concessions, the Emperor conceded the right of the state troops to remain in their own areas except in case of a national crisis. Another type of agreement between Prussia and the smaller states was that made with Waldeck. The ruler of Waldeck was heavily in debt and in return for a sum of money he surrendered his rights to Prussia and retired to Italy.

Privileges of Other States.—Some other units of the Empire possessed special privileges. The two great ports of Hamburg and Bremen were first allowed to continue as free ports, outside the scope of the imperial tariff law. They later gave up these privileges. Privileges of various kinds were enjoyed by the southern states which had been compensated by Bismarck for joining the union. Thus Bavaria, Wurtemberg and Baden were exempted from certain imperial excises, and had the right to levy excise on their own authority. In Bavaria and Wurtemberg the postal and telegraph services were subject only to general imperial laws. Bavaria had also special military privileges. Her army remained practically under her own control. The emperor had only the right to inspect it in times of peace. Wurtemberg too had special military privileges. Bavaria was exempt from imperial control in matters concerning railroads, residence and settlement. The right to seats on special committees of the Bundesrath (the committees on foreign affairs, army and

fortresses) belonged to Bavaria, Wurtemberg and Saxony. Bavaria had the right to preside in the Bundesrath in the absence of Prussia.

Proportionate Equality.—The German Empire was thus not the usual type of federal union. The reason was that, when the Empire was made, Bismarck had to take many historical conditions into account. He had to force some states, persuade and entice others, hence the many privileges of individual states. The proportionate power of Prussia secured for her most power in the Empire. The German Empire was a federal union of privileged states—the privileges in essence representing a proportionate equality. For Bismarck to have attempted to join the various independent states or principalities of Germany, each with its own royal house, its own government and its own pride, on the basis of equality would have ended in failure.

The Bundesrath: Its Composition.—The chief organ in the German Empire was the Bundesrath or Federal Council. The Bundesrath was the old Diet continued under a new name. The Bundesrath was the central organ of the German Empire: it was the federal house, and was composed of a number of ambassadors who represented the rulers of governments of states. These ambassadors or delegates were appointed by the rulers of the states, or, in the case of the free cities, by the senates. The number of seats allocated in the Bundesrath was practically in the same proportion as in the old Diet in the Confederation, with the exception of Bavaria—six seats instead of four were given to Bavaria as a special inducement to join the Empire. Prussia, in addition to her own votes, obtained the votes of other states which she absorbed in 1866, e.g., Hanover, Hesse-Cassel and Frankfort. Prussia in all had seventeen seats in the Bundesrath as compared with the six of Bavaria, four of Saxony and Wurtemberg, and three each of Baden and Hesse. The other states had two members or one member each. Prussia really controlled three more votes by her contract with Waldeck and by her control of the two Brunswick votes, which she obtained by setting a Prussian prince on the Brunswick throne. Thus, in all, Prussia controlled practically twenty votes. By securing ten other votes she could secure an absolute majority in the Bundesrath in all

matters. Only in very small matters were the other states able to defeat Prussia.

Instructed Voting.—The Bundesrath has been called by President Lowell of Harward University "that extraordinary mixture of legislative chamber, executive council, court of appeal and permanent assembly of diplomats." The members of the Bundesrath were appointed, and could be removed only by their own states. The votes cast by them were state votes ; they could not vote as free individuals. All the delegates of a state, therefore, had to vote in the same way according to their orders, so that it was not necessary for the full delegation of any particular state to be present to record the state vote. All state votes were counted whether all the state members were present in the Bundesrath or not. One Prussian member of the Bundesrath could cast the whole of the seventeen Prussian votes. According to the constitution, votes which were not instructed, i.e., votes which were cast irrespective of the instructions given by the governments of the individual members, were not counted. Formal instruction by the state was not always necessary, because the member or members nominated by the states were the chief officials of the states and were liable to be held to account for their actions in the Bundesrath by their own state governments.

Group Representation.—Some of the smaller states found it a heavy tax on their resources to maintain the full delegation in the Bundesrath, and the custom of group representation grew up. A single delegate nominated by groups of states recorded the votes of these states. The Bundesrath also had two sessions, one for important and the other for unimportant work. At the important session the individual delegates had to be present and at the unimportant session group representation was allowed.

The Federal Organ.—The Bundesrath was the federal organ of the Empire. Its form and functions are both explained by its descent from the German Diet. To a certain extent it was an assembly of diplomats; but it also had definite constitutional powers both as a law-making and as an executive body. The members were not free to act like members of a normal legislative body. They had to vote according to order. Their tenure also depended on the will of their own governments. The Bundesrath was the repre-

sentative body of the individual governments in the federal union, just as, before 1913, the members of the American Senate were elected by legislatures of the state governments. The American senators, however, were not compelled to vote in any particular way by their own governments.

Organisation of the Bundesrath.—The president of the Bundesrath was the Imperial Chancellor. He was nominated by the Emperor. As the Emperor was the king of Prussia, the Chancellor normally was one of the Prussian delegation. During the Great War this rule was departed from, but only the stress of circumstances caused by the war compelled the Emperor to go outside Prussia for his Chancellor.

Powers of the Bundesrath.—The powers of the Bundesrath were extensive. It controlled practically the whole field of the German government. All laws and treaties that fell within the domain of legislation required its assent. Theoretically the lower house or Reichstag had the right to initiate legislation, but the Bundesrath prepared and discussed the great majority of bills, as well as the budget. Once these were discussed in the Bundesrath, they were submitted to the Reichstag, and, if passed, were resubmitted to the Bundesrath to be passed finally before receiving the Emperor's signature.

Executive Powers.—The Bundesrath had also wide executive and judicial powers. As an executive authority it drew up regulations for the conduct of the administration and issued ordinances for the execution of the laws except in so far as that power had been given to other authorities. In finance its power was extensive. It elected the members of the Board of Accounts, which supervised the accounts of the nation. It had also considerable powers of appointment. It appointed the judges of the Imperial Court and the directors of the Imperial Bank. Other appointments, such as those of consuls and collectors of taxes, had to be approved by the committee of the Bundesrath concerned. Except in the case of invasion, when the Emperor could act alone, its consent was necessary to a declaration of war. Its consent was necessary also for the dissolution of the Reichstag and for federal executive action against a state which broke federal law.

Judicial Powers of the Bundesrath.—As a judicial body the Bundesrath had power to decide all disputes between the imperial and state governments regarding the interpreta-

tion of imperial statutes. It also decided controversies between individual states, provided these were matters of public law. The Bundesrath only adjudicated if one or other of the parties appealed to it. If a dispute arose in a state regarding its constitution and that state had no recognised authority to decide the dispute, the Bundesrath decided. It was also a court of appeal in the case of denial of justice by state courts, i.e., it compelled the state to give the complainant redress by passing a law suitable to the case.

The Reichstag : Its Composition.—The Reichstag was elected for five years by direct universal suffrage and secret ballot. Voters had to be twenty-five years old, not in active military service, and not paupers, lunatics or felons. Members were chosen in single electoral districts fixed by imperial law. The electoral district was originally fixed on the basis of one member to 100,000 of population, but before the end of the Empire the population had shifted so much that the old basis of distribution was unequal. As in America, no electoral district could be composed of parts of two or more states. Each state, however small, was thus able to have one representative. Being the largest and most populous state, Prussia had three-fifths of the whole membership ; Bavaria, Saxony and Wurtemberg came next. An absolute majority was required for election in the first ballot and in the absence of an absolute majority a second vote was held. Elections were held on working days, not on Sundays, as in France, which placed the working class at a disadvantage. Members were unpaid.

Powers of the Reichstag.—The powers of the Reichstag seem to have been great : actually they were much less extensive than those of the upper chamber, or Bundesrath. Theoretically all laws, as well as the budget, loans and treaties falling within the domain of legislation, required the consent of the Reichstag. It had the right to initiate legislation, to express its opinion on the conduct of affairs and to ask government for reports. Its actual powers were circumscribed by the Bundesrath. The constitution, for example, provided that the budget should be annual, whereas the chief revenue laws were permanent and could not be changed without the consent of the Bundesrath. The appropriation for the army was fixed by the law determining the number of troops, which was voted for a number of years at a time. The chief actual function of the Reichstag was

to consider bills prepared by the Chancellor and Bundesrath. The members could criticise or amend the bills, but as a rule the Bundesrath had the final word.

Power of Emperor to Dissolve the Reichstag.—The Reichstag was summoned by the Emperor. He had to convene it once a year, but could call it oftener if he chose. It had to be summoned at the same time as the meeting of the Bundesrath, and its sessions had to be public. The members could meet privately, if they wished to, but such a meeting had no status or authority. The Reichstag could be dismissed at any time by the Emperor with the consent of the Bundesrath. Although the Reichstag was a popular House, its dissolution did not depend upon popular opinion. It depended purely upon the will of the Emperor and Bundesrath.

Interpellations.—In the Reichstag interpellations were allowed. The Imperial Chancellor being the only minister in Germany, interpellations or questions did not affect a body of ministers, such as a cabinet. The Imperial Chancellor had the right to sit in the Reichstag not because of his office as Chancellor, but as a delegate of the Bundesrath; in fact, all members of the Bundesrath had a right to be present in the Reichstag, and they had also a right to speak whenever they wished. The members of the Reichstag could address questions to the members of the Bundesrath individually, but as a matter of practice all questions were handed to the Chancellor, who gave the answers. If demanded by fifty members, a debate might follow, but the Chancellor did not resign if the vote went against him; nor indeed was he under any obligation to conform in any way to the wishes of the Reichstag.

Comparison of Bundesrath and Reichstag in Powers.—The Bundesrath had far more power than the Reichstag. Besides those powers we have already seen it to possess, the Bundesrath had powers arising from special privileges. It could be summoned at any time if a third of its members demanded. On the other hand, the Reichstag could not sit alone: the Bundesrath had to be in session at the same time. Again, the Bundesrath could carry its meeting over to a new session, whereas the Reichstag had to conclude its meeting at the end of each session. The Bundesrath was thus able, and the Reichstag unable, to make its business continuous. Another very important privilege of the Bundes-

rath was its right to sit in private, whereas the Reichstag could not as a Reichstag meet privately.

The Emperor.—The constitution laid down that the presidency of the union belonged to the King of Prussia, who carried the title of German Emperor. The Emperor occupied not a hereditary throne but a hereditary office. The imperial throne was hereditary, because occupied by the King of Prussia.

His Powers.—The chief powers of the Emperor lay in military and foreign affairs. He was commander-in-chief of the army and the navy, and was also in charge of foreign affairs. He represented the German Empire in its relations with foreign states, and, subject to the limitations we have seen, could make treaties for the German Empire. Except in the case of invasion, when he could act alone, he could declare war with the consent of the Bundesrath. With the consent of the Bundesrath he could also order federal action against a state which disobeyed federal law. He summoned and closed the Bundesrath, and with its consent he could dissolve the Reichstag. He promulgated the laws and was the chief executive authority for their execution. He appointed the Chancellor and other high officials whom the Bundesrath had not the right to appoint. Such were his powers as Emperor. His real powers, however, came to him not as Emperor, but as King of Prussia. As the King of Prussia he controlled Prussia and as Prussia controlled the Empire, he, therefore, controlled the Empire. His chief power lay in the appointment of the Imperial Chancellor. As Emperor he had neither initiative in, nor veto over legislation. As King of Prussia he nominated the Prussian delegation as well as the Imperial Chancellor and in this way had complete control over legislation. The negative vote of Prussia could prevent all changes in the constitution or in the laws dealing with the army and navy and taxes. Thus the Emperor was all-powerful.

The Imperial Chancellor.—The Imperial Chancellor, who was nominated by the Emperor, was the one minister of the German Emperor. While in office, he was practically supreme head of the executive, responsible only to the Emperor. The Chancellor was not in any way responsible to the legislature. He was head of all the federal delegates and as such presided in the Bundesrath; he acted as intermediary between the Emperor and the Reichstag; he ex-

plained the policy of the government in the Reichstag, and, though liable to criticism, he was not responsible in any way to the vote of the Reichstag; he submitted the imperial budget to the Reichstag and gave an account of the general administration, but the Reichstag could not compel him to act in any particular way. The Chancellor controlled the various administrative departments of the government, and also supervised the administration of the imperial law in the individual states.

The Chancellor a Prussian.—Before the Great War the Imperial Chancellor always was a Prussian. He used to be head of the Prussian state government. He was both a Prussian and an imperial official and had vast powers arising from his double position. As Chancellor he presided in the Bundesrath but he voted in it as a Prussian delegate, and as the head of the Prussian delegation. In the Reichstag he could appear either as a commissioner of the Bundesrath or as a Prussian member of the Bundesrath. In practice he interpreted Prussian will to the federal government and enforced the Prussian will on Germany. Thus it was that Prussia ruled Germany.

The Vice-Chancellor.—Up to 1878 the Chancellor could appoint a substitute to preside in the Bundesrath, but he remained responsible for the actions of his substitute. After 1878 a responsible Vice-Chancellor could be appointed. The Chancellor himself judged when such an appointment was necessary and the appointment was made on his own motion. Although the Vice-Chancellor was nominally responsible, the Chancellor remained ultimately responsible in every case. The Vice-Chancellorship was a convenient institution in the case of pressure of public business.

Administration of Justice.—The administration of justice of the old German Empire was a mixture of state and imperial organisation. At the head of the judicial system was the Reichsgericht, or Imperial Court of Appeal, which sat at Leipzig. The Reichsgericht had original jurisdiction in cases of treason against the Empire, but its main functions were appellate. The general administration of justice was under the superintendence of the Empire. The state governments appointed their own judges and determined the limits of judicial districts, but imperial law determined the qualifications of state judges and the organisation of the courts.

Imperial codes of civil and criminal procedure as well as codes of civil and criminal law governed the state courts. The state courts were the interpreters of the imperial law although their decisions were given under their own rulers and in their own states.

The Prussian Judicial Organisation.—The organisation of the Prussian courts may be taken as an example of the actual administration of justice. At the head of the system, immediately below the Imperial Court, was, in each province, a superior district court, and below it a district court. There was also a court in each magisterial district (magisterial districts were formed from groups of rural communes). This (known as the *Amtsgericht*) was normally a court of original jurisdiction in smaller civil suits. Its composition was determined by the work to be done. The higher courts each year subdivided work among themselves and the number of judges depended on the amount to be done. Cases were divided among "chambers," usually three in number, civil, criminal and commercial. Each chamber had its own organisation, with a president at its head. In the magisterial districts there were also sheriffs' courts, for minor criminal cases ; major cases went to the criminal chamber of the district court. Special jury courts, composed of three judges of the district court, tried grave crimes. Appeal lay from the sheriff's court to the district court, and, in points of law, from the district court to the superior district court and the Imperial Court. Judges were appointed by the king for life.

Administrative Courts.—For administrative justice there was a series of courts, the organisation of which corresponded mainly with local administrative areas. The circle committee, in circles, the city committee, in cities, the district committee, in the districts, acted as administrative courts, their composition being specially regulated for this purpose. The chief administrative court, corresponding to the Imperial Court as a final tribunal, was the superior administrative court in Berlin. It was composed partly of judicial and partly of administrative officials. There was also a court of conflicts to decide whether cases belonged to ordinary or administrative jurisdiction.

3. THE GOVERNMENT OF PRUSSIA

Reasons for a Study of the Prussian Government.—A short analysis of the Government of Prussia is necessary

here, first, because of the importance of Prussia in the German Empire, second, because many Prussian institutions or agencies were used for imperial purposes; and third, because Prussia is an example of the state governments of the old Empire.

The King.—At the head of the Prussian government was the king, who held a hereditary crown, under the Salic law. All statutes required his signature, subject to the consent of his ministers. He appointed the chief officers of government, controlled the civil list, and conferred titles (a power he did not possess as German Emperor).

The Ministers.—The ministers were the servants of the king, and were responsible to him, not to the legislature. Ministers could appear in either house of the legislature, but were not obliged to resign if the vote of the house went against them. They were the heads of the various departments of government. The ministries were co-ordinated in the College of Ministers or Ministry of State, which met regularly to discuss policy, proposed laws, departmental conflicts, and executive work generally.

The Chamber of Accounts.—The Chamber of Accounts was the supreme financial body in Prussia. Its members were appointed for life, similarly to judges. This chamber was responsible directly to the Crown. Its members were nominated partly by the Ministry of State and partly by the king. The president of the Chamber was appointed by the king on the nomination of the ministry.

The Economic Council.—The Economic Council was a consultative body to advise in matters concerning trade and commerce, agriculture and public works. Its voice decided how the votes of the Prussian delegation on the Bundesrath were to be cast. The German Economic Council, established under the new German constitution, was modelled on the Prussian Council. The Economic Council advises the new German Government on economic matters. Its proposals are submitted to the Reichstag which accepts or rejects them as it pleases.

The Legislature.—The Prussian legislature consisted of two houses—a House of Lords and a House of Representatives. The House of Lords consisted of hereditary nobles, life members who represented particular interests, representative high officials, princes nominated by the king, representatives of ruling families which had lost their kingdoms or duchies, university representatives and other outstanding

men summoned by the king. The House of Representatives was composed of representatives chosen by all Prussians over twenty-five years of age not specially disqualified.

The Prussian Electoral System.—The electoral system requires special mention not only because of its distinctive nature, but because of the part it played in encouraging anti-privilege feeling in Prussia. The whole country was divided up into districts, and the voters in each were divided into three classes. Each class represented one-third of the taxable property of the district. Each class elected a third of the number of electors to which the district was entitled, and these electors ultimately elected the members of the House of Representatives. One elector was appointed for every two hundred and fifty inhabitants. Voting was public, and an absolute majority was necessary. Members had to be over thirty years of age, and Prussians. Tenure was for five years.

Powers of the Houses.—The two houses sat apart, except for the election of a regent, when they met together. They were summoned and adjourned at the same time. The legislative power was vested in the houses and the king. Each house could initiate legislation, but financial legislation had to originate in the lower house. The budget had to be passed or rejected as a whole. Actually most power was in the hands of the ministers, who were not responsible to the houses.

Local Government in Prussia.—The system of local government was the result partly of historical conditions and partly of definite creation for administrative convenience. There were four units of local government : (1) The province; the old provinces of Prussia—twelve in number—were continued for the purposes of local administration ; (2) the district ; a purely administrative creation ; (3) the circle ; (4) township and town.

The Province.—In the province there existed two types of governing agency—one representing the central government, the other the province itself. The central government was represented by a superior president appointed by the king, with whom was associated a provincial council, which had statutory authority in respect of local matters. The superior president exercised most of the real power. The organ of the province itself was the *Landtag*, or provincial assembly, which was composed of representatives elected by

the diets of the circle. The *Landtag* had definite functions in relation to the apportionment of taxes among the circles, election of officials, and examining the local budget. It also elected the provincial committee and the *Landeshauptmann,* which together were the chief executive authority in the province. These executive authorities exercised their functions strictly within the limits allowed to the *Landtag.* The superior president was responsible for the general administration.

The Rural and City Communes.—The lowest grade was the townships or villages, and towns. In the rural communes, there was a chief executive officer (mayor, president or village judge), and, if the villages were large enough, a council. In very small communes there was a mass meeting. In the towns the organisation varied according to their size. Sometimes there was merely an executive officer (burgomaster); sometimes there were boards or councils. In financial, police and military matters, the central government kept the power and direction mainly in its own hands. In the large towns the organisation varied, but generally speaking there was a mayor, who was a trained official. He was the president of the executive; associated with him was a council of aldermen, composed partly of members elected from the citizens of the town and partly of trained officials. The mayor and aldermen were the executive authority. The aldermen conducted their work in committees, in which members of the town council and citizens, not members of the Council, co-operated. The town council exercised control over the municipal budget. The three-class system of voting was the rule in the Prussian municipalities.

The Magisterial District.—Magisterial districts were formed out of groups of rural communes. The head of the magisterial district was the justice (*Amtsmann*), who was nominated by the circle diet for final appointment by the king. He was in charge of the police of the district and also was responsible for poor relief and local sanitation.

The District.—The district was not a unit of local self-government at all. It existed purely for local administration by the central government. All the officials were appointed by the central government. As a whole the officials were known as the administration, and the chief official was the administration-president. The officials worked through boards; the head of each board was known as the superior adminis-

trative councillor. In certain matters the administration-president had power to over-ride the decisions of the boards, and even the administration itself. There was also a district committee, composed partly of trained officials, and partly of members nominated by the provincial committee. This board confirmed certain orders of the administration-president, and also acted as an administrative court.

The Circle.—The diet was the chief organ of the circle (*Kreis*). It represented interests—towns (under 25,000 inhabitants), and country districts were apportioned places on it. The country districts were further divided up between rural communes and landowners. The chief local official was the *Landrat*, who acted for both the central government and the local diet. Associated with him was the circle committee, composed of himself and six members chosen by the diet. The *Landrat* was a civil servant, appointed by the superior president of the province. The circle committee acted also as an administrative court for the circle.

The New Constitution.—At the close of the Great War, Prussia, in common with the rest of the German states, became a republic. A new constitution was adopted in 1920. Many of the institutions of the kingdom of Prussia were continued, especially in judicial organisation and local government, but the legislature and the executive were fundamentally altered. The legislature consisted of two houses as before, a Diet (*Landtag*) and a State Council (*Staatsrath*). The function of the State Council was to advise and control the Diet ; it could reject legislation passed by it. The Diet was elected by direct universal suffrage of persons over 20 years of age. The executive was responsible to the Diet. The Prussian legislature, like other state legislatures, has been abolished by the Nazi dictatorship.

4. THE WEIMAR CONSTITUTION

Character of the Constitution.—Adopted by a National Assembly elected in the abnormal period immediately following the conclusion of the Great War, the Weimar constitution is a unique document. Framed by a body predominantly left wing in political complexion, it proposed not only to replace the imperial and state governments by republican democracy, but also to enunciate an advanced creed of political rights and social reconstruction. It maintained the

federal system, with a bias towards centralisation, for amendment of the constitution was left to the central government. When the German National Socialist (Nazi) Party came into power under Hitler, the Weimar constitution continued to exist, but gradually its provisions were so altered as to abolish federation altogether. At the moment, Germany is a unitary state.

Constitutional Provisions.—The maxims of liberty enunciated in the constitution are not of great significance. Some of them are the same as the fundamental rights enshrined in constitutions adopted in parallel circumstances; others are of a more national character. Freedom of the person, freedom of speech, freedom of meeting are the natural foundations of a democratic State. Freedom of association for public officials, the right to emigrate, secrecy of communication by letter, telegraph or telephone and prohibition of sex discrimination for public office are also prescribed. The constitution also abolishes privileges of birth or class, and titles. It also provides for the separation of church and state, and declares that marriage, as the foundation of the family is under the special protection of the state. Illegitimate children have similar rights to legitimate children. Private elementary schools are abolished. The conditions of compulsory school attendance are prescribed—eight years at a public elementary school and attendance at a continuation school till the eighteenth year of age. Special provisions are included to safeguard the rights of workers, and to create economic councils. A hierarchy of workers' councils is created in individual establishments, economic districts and the country as a whole. These councils were meant to co-operate with employers and other classes of the population in forming local economic councils, and a federal or national economic council, the formation of which was to advise the national government on all economic measures. This provision has been infructuous except with respect to individual establishments; the intermediary bodies were not created and only a provisional federal council was established.

The States.—While the Weimar constitution maintained many of the features of the imperial government, it radically altered their character. The federal system of government was maintained, but the "states" of the Empire lost their former standing and influences. They became *Länder* or pro-

vinces, and the constitution allows territorial rearrangement by simple act of legislation. As already indicated, the old dynastical system was abolished both in the Empire, and the states or provinces. The constitution also provides that every province save Prussia must have a unicameral legislature, to which the government must be responsible. These legislatures are to be elected on the same principles as the national Reichstag. In Prussia a second chamber (*Staatsrath*) is permitted ; it is elected by representatives of the Prussian provinces. The Prussian *Staatsrath* has the same rights and privileges with reference to the lower house (*Landtag*) as the national Reichsrath has to the Reichstag.

The Legislature.—The federal legislature provided for in the constitution consists of two houses—a Reichsrath and a Reichstag. The Reichsrath was the successor to the Bundesrath. Its composition was determined partly on a population and partly on a "state" or province basis. The numerical ratio was one member per million of population but each *Land* had to have one member. Although Prussia has over half the national population, the Prussian membership was restricted to two-fifths of the total, and it was provided that half the Prussian votes should represent the subsidiary governments of the Prussian provinces. The constitution also provides that provincial boundaries may be changed by a plebiscite, without reference to the provincial government : this provision seems to have been intended to permit of the dismemberment of Prussia. The members of the Reichsrath were elected by their own governments.

The Reichstag, the national lower house, is elected by universal national suffrage : all persons over twenty have the right to vote. The Reichsrath was made subsidiary to the Reichstag. It could object to measures passed by the Reichstag, but if the latter passed them again with a two-thirds majority they became law unless, within three months, the President submitted them to a referendum. The federal constitution may be amended by a two-thirds majority vote in the Reichstag, if at least two-thirds of the members are present. This power may be exercised irrespective of disapproval by the Reichsrath, but the Reichsrath may demand a referendum.

Legislative Powers.—The Weimar constitution enumerates the legislative powers of the federal government. It has ex-

clusive jurisdiction in certain matters, and concurrent powers in others; it also has a wide optional power over public order, and social welfare; it can also prescribe general principles to be observed by the provinces in dealing with certain questions, such as education, land, law and religious associations. Powers not specifically conferred on the national government belong to the provinces, but the national government can extend its own powers by legislation.

The Executive: President and Chancellor.—The constitution provides for a President. He is elected by direct popular vote for seven years. He is endowed with wide powers, but all his political actions have to be countersigned by ministers. The executive government is composed of the Chancellor and his ministers, who must have the confidence of the Reichstag. The Chancellor recommends the appointment or removal of ministers to the President, and with his ministry he determines the policy of the government. Each minister is responsible for his own department, but no act of a minister is valid without the countersignature of the Chancellor. The President, Chancellor and ministers may be impeached by the Reichstag. The President is also subject to recall, on the initiative of the same body.

The constitution purported to place the President outside political influence, save as advised by a responsible ministry. In 1934 however a law was passed in which the offices of President and Chancellor were united in the person of Hitler, who became known as the "Leader (Führer) and chancellor."

The constitution also governs the dissolution and organisation of the Reichstag. The main feature of note is the standing committee system, which was provided to guard the rights of the people against the government. The standing committees were meant to be permanent bodies, even in spite of dissolution.

Franchise.—The franchise is of the most democratic character. All persons over twenty years of age may vote; the voting is secret. Proportional representation was also introduced. In practice this meant proportional representation by party lists throughout the country, and it has led to centralisation of power and administration.

Initiative and Referendum.—The initiative and referendum were also introduced. As we have seen, the referendum is to be used in case of disagreement between Reichstag and

Reichsrath. If the latter does not agree with the former the President may order a plebiscite. If the Reichstag by a two-thirds majority insists, the President must order it. He must also order it if the houses disagree on a constitutional amendment. The people may order a referendum on anything save the budget, revenue or salary laws, if ten per cent. of the voters wish it. The initiative may also be used if ten per cent. of the voters desire it.

Judicial Organisation.—The Weimar Constitution maintained the judicial organisation of the Empire, but since 1935 a uniform system of judicial organisation has been established. All courts are now organs of the central government. The lowest courts are the *Amtsgerichte*, which try petty civil and criminal cases. In civil cases involving small amounts, cases are tried by a single judge : in more serious criminal cases the judge is assisted by assessors. The next highest courts are the *Landgerichte* which have civil, criminal and commercial divisions. The *Landgerichte* act as appeal Courts from the *Amtsgerichte*, and have original jurisdiction in more important cases. The criminal division of the *Landgerichte* is the court of first instance in most criminal cases : the *Amtsgerichte* deal only with petty cases and the public prosecutor may have such cases brought to the higher court. In the trial of capital cases, the *Landgerichte* are named *Schwurgerichte*. The superior Courts for *Amtsgerichte* and *Landgerichte* are called *Oberlandesgerichte*, of which there are twenty-six. These *Oberlandesgerichte* have civil and criminal divisions, and exercise revisional jurisdiction over all the smaller courts. The supreme court is the *Reichsgericht* which sits at Leipzig.

There are also administrative courts, and a hierarchy of labour courts, to deal with disputes arising from the relationship between employer and worker. The labour courts (*Arbeitsgerichte*) are arranged on a similar system to the civil and criminal courts. The supreme labour court is known as the *Reichsarbeitsgericht*.

Nazi Centralisation.—With the advent of Hitler, the Weimar constitution, though allowed to exist, was entirely transformed. In 1933 an Enabling Act introduced a new legislative procedure to replace "the obsolescent procedure of the Weimar legislative machine." By the Weimar constitution a bill had to pass from the Reichsrath to the Reichstag,

where it required three readings : thence it went back to the Cabinet. The Enabling Act permitted a resolution of the Cabinet, followed by completion and proclamation by the Chancellor, to become law. In 1933 acts were passed to unify the provinces and the *Reich*. One of these acts unified the states with the *Reich*. Provincial governors were to take over the powers of the provinces and exercise them according to the will of the political leader of the *Reich*. Thus Germany became a unitary state. The "states" of the federation were abolished ; they became areas of local administration. In 1934 a Reconstruction Act abolished the legislatures of the provinces. The sovereign rights of the provinces were transferred to the *Reich*. Provincial Governors were placed under the Reich Minister of the Interior, and the cabinet of the *Reich* was empowered to declare new constitutional law. In 1934 also the Reichsrath was abolished, and in the same year an Act was promulgated declaring that "the office of Reich President shall be joined with that of Reich Chancellor. The functions and prerogatives hitherto exercised by the Reich President are therefore transferred to the Leader and Reich Chancellor, Adolf Hitler."

These Acts completed the unification of Germany. Power was centralised in the hands of the Leader-Chancellor. The unification has not been confined to the highest offices of state. It has been carried on downwards through the whole administrative system. The aim of the Nazi leaders has been to eliminate any body which might claim independent action, and to erect a structure manned by officials who accept the Nazi party creed. The oath of allegiance now is "I swear to be loyal and obedient to the Leader of the German Reich and people"; it used to be to "the laws and constitution." The judicial system has also become permeated with Nazi principles. Judges are permitted to frame their decisions according to the National Socialist party creed, and the personnel of the Courts have to take the same oath of allegiance as officials. A special type of court has also been created for political crimes : it is called the People's Court (*Volksgericht*), and the personnel is made up of Nazi party supporters. In 1935 a law was promulgated to the effect that the courts may punish offences not punishable under the Criminal Code if they deserve punishment "according to the underlying idea of a penal code or according to healthy public sentiment."

CHAPTER XXVIII

THE GOVERNMENT OF JAPAN

1. HISTORICAL

Modern Japan.—The royal house of Japan claims descent from the first Emperor, Jimmu, the date of whose accession to the throne is usually given as 660 B.C. The modern history of Japan dates from the revolution of 1867-68 when, after many centuries, the royal house was reinstated to the ruling power, which hitherto had been held by *de facto* rulers, or shoguns. With the revolution of 1868 the modern, or Meiji era commenced, and with it modern Japan may be said to have started.

The Tokugawa Era.—The revolution can be understood only by a study of the conditions prevailing in the previous (Tokugawa) era or shogunate. The first of the Tokugawa shoguns, Iyeyasu, established his position by defeating his enemies at the battles of Sekigabara in 1600, and Osaka, in 1615. These battles put an end to internecine strife, which had continued steadily from the middle of the fifteenth century. The battle of Sekigabara is really the turning point in Japanese history, for with it the Tokugawa shoguns became masters over the many local feudal barons, and civil war gave place to two and a half centuries of peace, prosperity and orderly development.

Social Classes : The Mikado.—Once he had established his position by military force, Iyeyasu proceeded to organise the country so as to ensure peace. One of his most important acts was the consolidation of the social, governmental and legal systems of Japan in a document known as the Testament of Iyeyasu. In the feudal era, Japanese society had developed a form and rigidity not unlike the Hindu caste system. At the head of the social and political hierarchy was the Emperor (or Mikado), who was regarded as divine both in origin and in person. No one, save a few of the highest ministers and his consorts, was allowed to see him. His person was so sacred that, if he spoke to anyone outside this small circle, a curtain was drawn between the speaker and the Emperor. Living apart from the ordinary life of his subjects, he could know, and do only what the shoguns told him.

The Kuge.—The social strata of Japanese society were three—the nobles (*kuge*), the military class (*samurai* or *buke*), and the common people (*heimin*). The *kuge* were the court nobility, each family of which claimed descent from some previous Mikado. They occupied the chief administrative posts by hereditary right, but did not enjoy large emoluments. They were not territorial magnates, so that their position was one of high honour and comparative poverty.

The Samurai.—Next to the *kuge* came the *samurai*, or military class. Like the *kuge*, they occupied administrative posts, which sometimes were hereditary. Many owned estates granted as a reward for military merit. Most of them received stipends from their feudal chiefs, or *daimyos*. The *daimyos* were a permanent landed nobility so organised by Iyeyasu that they could not defy either the central government or make war on each other. The *samurai* as a class did not seek wealth. Their one duty was military service, and their chief object in life was not to disgrace the code of honour of their class. Stoical indifference to pain, relentless vengeance for insult, strict truthfulness, filial piety, unselfishness and disregard for death were their chief characteristics as a class.

The Heimin.—The *heimin* composed the third, and most numerous class of the people. They had no social status. They could not, like the *samurai*, carry swords, and their daily bread had to be earned by manual labour. The *heimin* were divided into three classes—farmers, artisans and traders. The farmers were the most important : indeed some of them enjoyed the privilege of carrying one sword (the *samurai* had the privilege of carrying two). The artisans, who included sculptors, artists, ceramists and lacquerers, came next. The traders were the lowest in the recognised social scales.

Outcastes.—Outside the recognised social classes were the *eta* and *hinin*. The duties of the *eta*, who were the descendants of enslaved prisoners of war, were to dispose of dead bodies, kill animals and tan hides. The *hinin* were mendicants, whose duties included the removal and burial of bodies of executed criminals. These pariah classes lived apart from the *heimin*, and could neither intermarry nor eat with them.

The End of the Shoguns.—The peace and order established by the earlier Tokugawa shoguns proved the undoing of the shogunate. In the first place, the social classes changed under the new conditions of peace. The *samurai* or hereditary

soldiers, in particular, lost their old virtues. Their old conditions of life had departed, and their incomes were not sufficient for the expenses of the more luxurious times of peace. The *heimin* flourished, for peace favoured money-making by trade. Luxurious living became common, and wealth came to be looked on as more important than birth. In the second place, the shoguns, who had preserved ascendancy in war, deteriorated in times of peace. Their power passed from them to their ministers or to their feudatories, so that in Japan there were three grades in the government—the Mikado, whose divinity made him largely an abstraction ; the hereditary shoguns, who wielded nominal powers but who preferred pleasure to work ; and the feudatories, into whose hands the actual power of government passed. In the third place, the work of scholars brought to light the historical and legal fact of the sovereignty of the Emperor, from which the conclusion followed that the power of the shoguns was both illogical and unconstitutional. Scholars also brought to light the virtues of Shintoism, the old national religion of Japan, the revival of which had much influence in the development of the new Japan. In the fourth place, during the Tokugawa era Japan had come into intercourse with foreign nations. The shoguns proved unable to preserve the policy of isolation which the people regarded as essential for the best interests of their country. In the earlier years of the Tokugawa era foreign intercourse had been encouraged, but from 1637, after a rebellion of Christians, the country was closed to foreigners, save the Chinese and the Dutch, till the second half of last century.

The fifth, and immediate, cause of the fall of the shogunate was the attitude of the Satsuma and Choshu clans and their adherents, on the question of opening Japan to foreigners. These two southern clans had been granted semi-independence in the days of Iyeyasu, but they remained hostile to the shoguns. Their hostility was accentuated by the demands of foreign nations for entry into Japan, and the bombardment of their towns by foreign warships. Acting in conjunction with many of the court nobles they demanded the abolition of the shogunate and the union of Japan under the Emperor.

The shogunate was thus called on to settle two questions—the disaffection of the Satsuma and Choshu clans, and of

the court nobility, and the admission of foreigners. The last shogun, Keiki or Yoshinobu, settled the question by voluntarily resigning his authority to the Emperor. This surrender was followed by a considerable amount of bloodshed, but ultimately the power of the Emperor was firmly established. From this date (1868), begins the Meiji Era, the era of modern Japan.

Results of the Revolution.—The revolution in Japan was led by a small group, most of whom, at the outset, were not democratic. Once the revolution was completed, they had no clear ideas as to how the country was to be ruled. The leaders of the Satsuma clan had aimed at securing the shogunate for themselves, but, as they had to act in conjunction with the Choshu clansmen, they exacted a pledge that, when the Emperor resumed his power, he should summon an assembly which would decide on future policy and appoint the best men of the country to the chief administrative posts. This promise was secured not as a matter of constitutional principle but as a result of the mutual distrust of the Satsuma and Choshu clans.

The Unification of Japan.—One leading object of the revolution was clear, viz., the unification of the Japanese nation. Up to 1868, as we have seen, Japan was divided amongst a large number of feudal chiefs who ruled their own territories in semi-royal style. Each had his own system of administration and law, and one of the first problems that faced the reformers, who themselves had no social position or prestige similar to that of the feudal chiefs, was to establish a uniform system of law and administration over the whole of Japan. Thus, at the beginning of the revolution, while theory dictated one course, administration necessitated another. The reformers had no machinery to carry out their theories other than that of the feudal chiefs. But their difficulty was solved in an unlooked-for way. Several of the most powerful feudal chiefs surrendered their powers to the Emperor of their own free will. Among those were the chiefs of the Satsuma and Choshu clans, and their example was followed by close on two hundred and fifty other chiefs. The feudal system in Japan was thus abolished by the feudatories themselves in order to secure a united Japanese nation. Few countries can show a similar example of self-sacrifice for the common good on the part of their

leading nobles. Although the *samurai* of Japan in many cases may have been actuated by ulterior personal motives, the fact remains that Japan owes its first important step towards unification to the action of a class for whom self-sacrifice was an essential part of a code of honour.

Steps in Centralisation.—After the surrender of their feudal rights by the feudal chiefs, the first steps towards centralisation of the government were the appointment of the feudal chiefs themselves as governors of their own districts and the confirmation of the *samurai* in their stipends and administrative positions. The pay of the governors and the *samurai* was fixed, and the balance of the revenues of the districts over which the governors presided went to the Imperial treasury. A cabinet, composed of the leaders of the revolution, was formed in Kioto to conduct the administration of the country. This system was practically a continuation of the previous system with a change of name. Something further was necessary to make Japanese government really a national government. The real powers of administration still remained in the hands of the old feudatories, who were now called governors. The army also was at the command not of the Emperor but of the feudatories. To make the government national, it was necessary that the administrative districts should come under the central government, and that the local *samurai* should be under the command of the Emperor. The first steps towards centralisation were accomplished in a way similar to the previous methods. Some of the local governors voluntarily agreed to hand over the administration of their districts to the central government ; a large number of the *samurai* offered to lay down their swords ; several of the clans sent contingents of troops to the Emperor's army ; and, finally, in the formation of the central government, or cabinet, the principle of clan representation was adopted.

In 1871 a decree of the Emperor abolished the system of local autonomy by districts. The old feudal nobles were relieved from their posts as governors. The taxes of these districts were now to come to the central government and the officials were to be appointed by it. The chiefs were guaranteed a fixed percentage of the income of their old territories, but they were henceforth compelled to live in the Imperial capital, which was now Tokio. The *samurai*

also were confirmed in the enjoyment of their revenues, but in many cases the hereditary principle was abolished. It has been reckoned that some 400,000 *samurai* received such pensions, the annual sum amounting to something like £2,000,000. The new government had to find some method of relieving the funds of the country of this heavy charge. But the problem was solved largely by the *samurai* themselves. Although they had been a privileged class from time immemorial and as such had enjoyed hereditary revenues and distinctions, they recognised that their place in the modern scheme of things was incongruous. In 1873, the government of Japan commuted the revenues of the *samurai* at the rate of six years' purchase for hereditary pensions and four years' purchase for life pensions. Such an arrangement was not a fair business proposition, but the *samurai* accepted the arrangement not as a measure of financial justice but as a recognition that their utility had departed. Not only did they sacrifice their revenues but they also gave up their hereditary distinctions, the chief of which was the privilege of wearing two swords. Previous to this, many of them had given up this privilege and had voluntarily stepped down the social ladder to act as traders or as peasants. The Imperial Decree of 1873 was not compulsory, but the *samurai* accepted it according to the spirit of the times.

With the accomplishment of their first objects, the reformers were not able to preserve unity amongst themselves. So long as their purpose was not achieved, the reformers acted as one. With the necessary reconstruction which followed, however, dissension began to enter. The radical measures of the first few years after the restoration of the Emperor had been carried through more successfully perhaps than even the most sanguine reformers could have expected, but soon the inevitable split took place between the old and the new, or the conservatives and the liberals or reformers. The conservatives did not look with favour on the wholesale abolition of the old social distinctions and privileges. The *samurai*, in particular, were disturbed by a proposed measure of conscription. They had resigned many of their hereditary privileges, but one thing which the majority of them could not regard with favour was the surrender of their privileges as the military class of Japan. In spite of their surrendered revenues and outward distinctions, they still hoped to continue

to occupy the chief posts in the army and navy. According to the conscription law the *heimin* could become soldiers as well as the *samurai*. The discontent of the *samurai* was brought to a head by two measures which were adopted by the government in 1876. The first was the complete veto on the wearing of swords; the second the compulsory commutation of their pensions. The Satsuma clan was the centre of the *samurai* movement and in 1877 a bitter struggle broke out between them and the government, in which, though the struggle was short, there was enormous loss of life. The Satsuma were overcome, and the victory of the government finally dispelled all doubts as to the fighting qualities of the Japanese nation as a whole.

The Course of Development.—The new government proceeded to make itself as efficient as possible. The old anti-foreign policy was replaced by an intense desire to model Japan on the systems of the West. Englishmen, Americans, Frenchmen, Germans and Italians were imported to organise the administration and industries of the country. Japanese students travelled to American and European universities to study the western systems for themselves. Development was very rapid, so rapid indeed that many of the Japanese themselves thought that reform was proceeding too quickly. The sudden change of manners, customs and organisations, however, did not produce any armed upheaval. Such troubles as did arise were due to attempts to force or to retard the growth of representative government.

Growth of Representative Government.—After the defeat of the Satsuma insurgents in 1877, another clan, the Tosa, who, though they had not joined the Satsuma insurrection, sympathised with the Satsuma *samurai*, presented a petition to the government asking for a representative assembly. This memorial was not the mark of an advanced democratic movement: it was an attempt to secure the highest administrative posts for a wider circle than the oligarchy of the four chief clans. The memorial asked that the common people should be educated to take a share in government, but it really aimed at securing a voice in government for the *samurai* as a whole, as distinct from the leading members of a few clans. Before this time, the government had organised an assembly. In 1874 an arrangement was made for periodical meetings of the provincial governors, who were to act

as the representatives of their areas. These governors, of course, were official nominees, and their main duty was more to persuade the people of their provinces to accept the measures of the central government than to represent the views of their people to the central government. Moreover, these meetings were advisory or consultative ; they had no legislative power.

The Elder Statesmen.—In 1875 a body of "elder statesmen" (*genro-in*) was constituted, partly as a legislative assembly, partly as a temporary expedient to enrol on the side of government leading men whose antagonism might be fatal. The body was composed of official nominees, and its main functions were to consider and revise all laws before they were finally promulgated.

Local Representative Bodies.—In 1878, Okubo, the leading Japanese minister, was assassinated at the instigation of the Satsuma party, which ostensibly demanded remedies for the abuses of power on the parts of the government, and representative institutions. The first step in representative government was the creation of representative bodies in local government. These bodies did not have legislative powers, nor were they representative of the people as a whole. The suffrage was restricted to persons with a high property qualification, and the members elected had to have double the property qualification of the voters. The chief functions of these bodies were to levy and spend the taxes of their areas, under the supervision of the minister in charge of home affairs, and to present petitions to government. Frequently governors disagreed with assemblies, but on the whole they were good training grounds for wider representative government.

Growth of Parties.—Meantime political parties began to develop. One, the Liberals, was organised in 1878 by Count Itagaki, who had played a leading part in the previous agitation for parliamentary government. The "platform" of this party theoretically was free constitutional government. Actually their object was to oppose the government. Another, the Progressive Party, was organised by Count Okuma in 1881, with the same theoretical party principles as the Liberals. Instead, however, of acting together, these two parties opposed each other, for the party movement was more personal than political.

The Constitution.—The immediate result of the formation of these parties seemed to justify their existence and methods. In 1881 an Imperial edict was issued promising that a national assembly would be convened in 1891. The parties and the government were bitterly hostile to each other, but the guiding hand of the Marquis Ito (afterwards Prince Ito), the chief adviser of the Emperor, prevented internal strife, and ultimately the government and the parties came to a working understanding. Despite opposition the much maligned government had done an enormous amount of work in organising the legal, political, industrial and commercial life of Japan. Railways, telegraphs and harbours were established ; the organisation of the post office ; the codification of the civil and the criminal laws ; the introduction of the competitive system for public appointments ; the creation of a national bank ; the re-organisation of local government had been completed. The national finances were put on a stable basis. Education was encouraged. A mercantile marine was established, and the defence systems organised. In spite of the obloquy cast at it by the dissatisfied parties, many of the leaders of which were dissatisfied because either they had once been in office or could not get office, the old clan bureaucracy made modern Japan.

2. THE PRESENT SYSTEM OF GOVERNMENT

The Constitution.—The constitution was promulgated on February 11th, 1889, and the first session of the Diet was opened on November 29th, 1890. The constitution was the work chiefly of Prince Ito, who had guided the government in the stormy years preceding the constitution. After the Imperial rescript of 1881 promising the constitution, a commission was appointed to examine the constitutions of the leading European states and the United States. The leading and directing figure on the commission was Prince Ito. The constitution is a half-way measure between the old feudal system and modern free government.

Amendment of the Constitution.—The constitution originally was a gift of the Emperor to the people, and the power of initiating amendments rests with him. A proposed amendment must be submitted to the Diet. Two-thirds of the members of either house must be present before a proposed amendment can be discussed, and a two-thirds

majority of the members present is necessary for the adoption of an amendment.

The Legislature.—In constitutional theory the Emperor exercises legislative power with the consent of the Imperial Diet. The Diet is composed of two houses, a House of Peers, and a House of Representatives. The Emperor convokes, opens and prorogues the Diet, and he has power to dissolve the lower house. He may also summon extraordinary sessions. The Diet meets every year, and each session lasts three months. Discussion is public, but the government may ask for a secret sitting of the houses and the houses themselves may decide to have secret sittings. The members of the Diet enjoy privileges and immunities similar to those enjoyed by members of parliament in Great Britain.

Organisation of the Houses.—In each house of the legislature there is a president and vice-president, all of whom are paid. In the upper house these are nominated by the Emperor from among the members. The tenure is for seven years. In the lower house they are nominated by the Emperor from among three candidates selected for each office by the house itself. Each house is divided into sections by lot, and the sections elect an equal number of members for the standing committees. Special committees are also appointed for particular purposes when necessary. Bills may be initiated by each of the houses or by the government, and all measures must go through both houses and be signed by the Emperor. The budget must be initiated in the House of Representatives, but the House of Peers may reinsert items which have been rejected by the lower house.

The House of Peers.—The House of Peers is composed of (*a*) princes of the blood royal, who have attained their majority ; (*b*) princes or marquises who have attained the age of thirty ; (*c*) counts, viscounts and barons, who have attained the age of thirty and who are elected by their own orders, the number elected never to exceed one-fifth of each order ; (*d*) men of thirty years of age or above who have rendered distinguished service, and men of erudition, nominated by the Emperor ; (*e*) four members of the Imperial Academy of Sciences, thirty years of age and over, elected by that body ; (*f*) representatives thirty years of age and over of the highest tax-payers, elected by themselves, one or two, in number, from Hokkaido and each *fu* and *ken*. The number of non-

titled members must not exceed the aggregate numbers of the titled members. The elected titled members and the elected representatives of the highest tax-payers sit for seven years ; the others sit for life.

The House of Peers is thus constituted on a basis of social aristocracy, distinguished service and property. As may be expected from its composition, it is a conservative body, and as a second chamber it wields much more power than second chambers in western democracies. It has equal power in legislation with the House of Representatives, and often blocks the measures of the lower house. As noted above, it has also definite powers in financial legislation.

The House of Representatives.—According to the new election law passed in the 1925 Diet, the House of Representatives is composed of members of not less than thirty years of age elected by male Japanese subjects of not less than twenty-five years of age. The proportion of the total number of members to the population of Japan is approximately 1 to 133,000. Only one member is elected for each constituency, and only persons who have lived continuously for not less than a year within the same city, town or village may be registered as electors. Certain classes are excluded from voting or being elected. Heads of families of peers and men serving in the army or navy can neither vote nor stand for election. Holders of certain specified government posts are also ineligible for electing or being elected, but government officers of the political class may be members of the House while holding office. A general election must be held once every four years, or oftener if the House is dissolved. Election is by secret ballot, and, as each elector must write the name of the candidate, the electors must, to some extent, be literate.

The Executive: The Emperor.—At the head of the executive is the Emperor. His person is sacred and inviolable. His powers are very extensive. In him is vested the right of convoking, closing or proroguing the Diet, and of dissolving the House of Representatives. He may issue ordinances in cases of urgency, when the Diet is not sitting, for the approval of the Diet when it meets. He may also issue ordinances for the execution of the laws and for the preservation of peace and order. He is commander-in-chief of the army and navy, and determines their organisation. He

can declare war, make peace, conclude treaties, and proclaim a state of siege. He determines the organisation of, and makes appointments in, the administration. He confers all titles of nobility, and grants pardons, amnesties or commutation of punishments. All these powers are exercised subject to the counter-signature of the minister concerned, who is responsible for the acts of the Emperor.

The Privy Council and Elder Statesmen.—The Privy Council is composed of a president, vice-president, a chief secretary, five secretaries, and twenty-five councillors. The ministers are *ex-officio* members of the council : they also form the cabinet. The Privy Council advises the Emperor on all the matters which come within his executive authority, on all constitutional questions, on the composition of the cabinet, and on proposed legislation. It is the constitutional advisory body to the Emperor.

A body of Elder Statesmen (*genro*) composed originally of leaders like Ito, advises the Emperor, but it is now practically defunct, as most of the members are dead.

The Cabinet.—The cabinet is an extra-constitutional body composed of the ministers of state, whose position as ministers is constitutional. Normally, the ministers are twelve in number, but the premiership may be held with one of the ministries, thus making eleven holders of office. The ministers are the minister president of the state, or prime minister, and the ministers of home affairs, foreign affairs, finance, war, marine, justice, education, agriculture and forestry, commerce and industry, communications, and railways. At present there is also a minister for overseas affairs. The members of the cabinet may be chosen from either house, and they may speak in either house, whether members of it or not. Originally the cabinet was responsible to the Emperor alone, but with the growth of political parties the cabinet is more and more developing the character of normal cabinet government, viz., responsibility to the lower house.

Political Parties.—The party system in Japan has neither the organisation nor the stability of the party systems of Britain or the United States. The early history of modern Japanese parties has already been noted, but since the adoption of the constitution, party lines have changed and many other parties have grown up. Hitherto there have been no definite lines of cleavage in Japanese parties. They have

been formed largely on personal grounds. They all avow progressive principles : in fact there is no real conservative party in Japan. In the present House of Representatives there are six parties, with a number of independents. There is a tendency for modern parties to split up on principles or policy more than on the personality of leaders.

The Judiciary.—The Emperor is the source of justice, which is administered by the courts in his name. The courts are arranged in four grades :—(1) local courts ; (2) district courts ; (3) courts of appeal ; and (4) the supreme court. The local courts are held by single judges ; the district courts and courts of appeal are collegiate, with several divisions, each of three judges. The supreme court is also collegiate, and is divided into divisions with five judges each. The scope of the jurisdiction of all the courts is defined by law. Each court has both civil and criminal jurisdiction. There is a court of administrative litigation for trying suits arising from the alleged misuse of executive authority. The courts have no jurisdiction over the constitution : the right of interpreting the constitution belongs to the Emperor.

Local Government.—The local government of Japan is based on the Prussian system. The whole country is divided into prefectures (*fu*, municipal, and *ken*, rural), which are subdivided into municipalities (*shi*) and counties (*gun*). The counties are subdivided into towns (*cho*) and villages (*son*). In the prefectures there is a governor, prefectural assembly and prefectural council, and this organisation is repeated in the other larger units (in the county, with the sheriff, county assembly and county council : in the municipality with the mayor, municipal assembly and municipal council). In the towns and villages there is a chief magistrate and a town or village assembly. These assemblies decide on financial matters or on subjects delegated to them by the superior units. The franchise in local government is based on residence.

Hokkaido, Formosa or Taiwan, Sakhalin and Korea have special organisations of their own. Formosa and Korea are under a semi-military government.

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